

**United States Department of Labor
Employees' Compensation Appeals Board**

BRENDA G. WELCH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 04-440
Issued: November 16, 2004**

Appearances:
Brenda G. Welch, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 25, June 11, July 9 and November 28, 2003 which denied her claim for aggravation of an underlying preexisting spondylolisthesis. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained an aggravation of her underlying spondylolisthesis causally related to factors of her federal employment or to a March 15, 1999 accepted low back strain injury.

FACTUAL HISTORY

On March 29, 1999 appellant, then a 41-year-old city letter carrier, filed an occupational disease claim alleging that she developed chronic low back pain from bending over and lifting packages and heavy satchels of mail. The Office accepted that appellant sustained low back

strain.¹ Following her injury, appellant participated in physical therapy and was able to return to limited duty with lifting restrictions. She thereafter returned to regular duty on April 15, 1999.

On June 21, 2000 appellant filed a notice of occupational disease claiming, that on May 10, 2000 she was told that she had a degenerative condition that was aggravated by her employment. She described her condition as “chronic back pain,” and stopped work on June 2, 2000.² Appellant submitted a May 26, 2000 radiology report which identified facet osteoarthritis, hypertrophy and subluxation together with a Grade 1, L5-S1 degenerative spondylolisthesis and spur formation of the vertebral endplates, complicated by shallow, intraforaminal bilateral disc herniations with advanced facet osteoarthropathy.

By report dated July 5, 2000, Dr. Cassim M. Igram, an orthopedic surgeon, noted that appellant’s computerized axial tomography (CAT) scan results demonstrated L5-S1 spondylolisthesis³ and a high grade foraminal stenosis at L5-S1. Dr. Igram recommended surgery for an L5-S1 decompression and fusion with hardware and a bone graft. He did not relate the condition found to appellant’s employment.

In a July 10, 2000 statement, appellant indicated that she was treated by a physician other than her regular health care provider on May 12, 2000, who performed chiropractic manipulation of her spine and “cracked her back,” resulting in increased back and leg pain. Appellant worked until her sciatic nerve was so inflamed that it crippled her. She stopped work on June 8, 2000 and underwent L5-S1 decompression surgery on July 11, 2000.

By letter dated August 14, 2000, appellant noted that it was explained to her that she had degenerative arthritis of her back, which had been present for some time. Appellant stated that the only activities she had done since 1999 which could have aggravated her back were employment activities.

In a decision dated September 27, 2000, the Office rejected appellant’s occupational disease claim finding that she had not established fact of injury.⁴ The Office advised that the medical evidence submitted did not relate her back condition to specific employment factors or activities on or around May 1, 2000.⁵ The Office further noted that there was no medical evidence relating her spondylolisthesis to any employment factors.

¹ Case No. 11-0171638.

² This case was numbered 11-0180077.

³ A May 26, 2000 radiology report indicated that appellant had a bony dominant L5-S1 neural foraminal stenosis created by facet osteoarthritis, hypertrophy and subluxation along with a Grade 1 degenerative spondylolisthesis and spur formation of the vertebral endplates, exacerbated by shallow, intraforaminal disc herniations bilaterally, slightly greater on the right. Magnetic resonance imaging scan results were noted as including a Grade 1, L5-S1 spondylolisthesis which may be on the basis of advanced facet osteoarthropathy as the facet joints were subluxed and degenerated. Moderate disc degeneration at L5-S1 was noted.

⁴ Case No. 11-0180077.

⁵ The date mentioned on appellant’s claim form was May 10, 2000 and not May 1, 2000.

On October 24, 2000 appellant requested an oral hearing before an Office hearing representative and submitted a November 1, 2000 narrative report, from Dr. Igram who stated that the spondylolisthesis developed overtime with repeated wear and tear.⁶ He indicated that it was not something that typically developed with a specific injury and would degenerate over a long period until it became symptomatic. Dr. Igram indicated that appellant's herniated disc, in addition to the spondylolisthesis, seemed to cause much of her symptoms and he noted that the herniated disc could have caused the sudden onset of appellant's right leg pain. Dr. Igram noted as follows:

“[I]t is certainly possible that the repetitive activity over 12 years and the repetitive use of the spine with regard to carrying out the function of a letter carrier could increase the nature of the problem. Carrying a 35-pound satchel also could be a causative problem. It is, however, certainly possible that this problem could have developed if [appellant] were not a letter carrier. In other words, it is within the realm of possibility that [appellant's] work could have something to do with this, although I cannot state with absolute certainty.”

Dr. Igram noted that appellant's spondylolisthesis degenerated slowly over time, that the sudden onset of right leg pain could be related to the herniated disc, or that the herniated disc could have been caused by a specific traumatic episode.

On February 12, 2001 appellant filed a Form CA-2a claim for recurrence of disability alleging that she had disability commencing May 10, 2000, but noting that she did not stop work until May 31, 2000.⁷ She claimed that her condition was a consequential injury, alleging that the aggravation of her preexisting spondylolisthesis was consequential to her previous surgery and low back pain episodes. On March 18, 2001 she alleged that her work duties aggravated and exacerbated her preexisting spondylolisthesis, causing disability and the need for surgery.

In a March 9, 2001 report, Dr. Tiffany J. Ketcham, an osteopathic physician and appellant's treating physician, noted that “although she denied any acute injury on both occasions where she was initially seen for back pain, a consult from Dr. Igram dated October 4, 2000, states that the spondylolisthesis was likely a preexisting condition. This could likely be exacerbated by her work activity which included lifting between 25 and 50 pounds.”

By decision dated May 30, 2001, the Office rejected appellant's claim for a May 10, 2000 recurrence of disability finding that she had failed to submit sufficient medical evidence.⁸ The Office found that none of the submitted medical evidence established “that the condition [she] developed on or about March 15, 1999 worsened, causing [her] to have to undergo surgery on July 11, 2000.”

⁶ Case No. 11-0180077.

⁷ Case No. 11-0171638.

⁸ *Id.*

By letter dated June 1, 2001, appellant requested an oral hearing before an Office hearing representative on the denial of her recurrence of disability claim. Appellant noted that case number as 11-0171638. By letter dated June 25, 2001, appellant again requested an oral hearing.

A hearing was held on August 8, 2001 at which appellant testified.

Appellant submitted a report dated August 7, 2001, from Dr. Todd C. Troll, a specialist in physical medicine and rehabilitation. He noted her diagnosis as severe facet arthropathy and Grade 1 spondylolisthesis with disc herniations causing neuroforaminal stenosis on the right. Dr. Troll stated that “[t]here is a question of whether or not her back problem is work related. She certainly performed a job which could have predisposed her to back problems. However, the nature of her back complaints were discovered to be degenerative in nature. Whether or not her occupation contributed to the degenerative process would be impossible to determine.”

In a letter dated August 20, 2001, appellant contended that her back symptomatology began around May 7 or 9, 2000, as an irritation of her lower back, that worsened around May 10, 2000, after she carried a heavy tub of mail around an office building and that thereafter she had to take sick leave.

In a report dated September 6, 2001, Dr. Troll responded to the question as to whether or not the degenerative condition in appellant’s back was aggravated or accelerated by her work activities. He stated:

“I do think it is probable that your back condition was aggravated by your work activity. This is a plausible explanation given the fact that you had to do repetitive bending and forward flexion of your spine, which could have aggravated your condition.”

By decision dated October 24, 2001 and finalized October 26, 2001, the Office hearing representative affirmed the Office’s September 27, 2000 decision. The hearing representative found that the medical reports from Dr. Troll, Dr. Ketchum and Dr. Igram were speculative and were of reduced probative value.

On May 13, 2002 appellant advised the Office that her June 1, 2001 request for a hearing had not yet been scheduled and requested action on her case.

A hearing was held on June 27, 2002 at which appellant testified.

By decision dated August 8, 2002, the hearing representative affirmed the Office’s May 30, 2001 decision, finding that no recurrence of disability was established. The hearing representative found Dr. Troll’s report to be speculative and not supportive of a recurrence of disability.

Appellant submitted a March 5, 2003 report from Dr. Carol Kuhle, an osteopath, which stated:

“It appears that [appellant] did have a spondylolisthesis, which is a congenital defect. Certainly, adding weight and walking over the last 12 years has compounded that problem accelerating her degenerative disease. The fusion was corrected and she seems to be doing well at her present job, but I do believe adding 35 pounds to her back on a daily basis would create a situation where she would have more acceleration of her degenerative joint disease and possibly reexacerbations of her chronic back problems.”

In a letter dated April 9, 2003, appellant requested reconsideration.

By decision dated April 25, 2003, the Office denied modification of the August 8, 2002 decision.

On May 2, 2003 appellant filed a Form CA-2 notice of occupational disease claim alleging that on April 8, 2003 she sustained an acceleration of her underlying degenerative condition. Appellant described her condition as “degenerative spondylolisthesis compounded and accelerated by 12+ years of carrying up to 35 pounds of mail on [her] back routinely.”

By letter dated May 9, 2003, the Office advised appellant that the information submitted was insufficient to establish her claim.

In a May 14, 2003 letter, appellant contended that her underlying condition of degenerative spondylolisthesis was aggravated or accelerated by factors of her federal employment. Appellant claimed that the accepted back strain condition was a misdiagnosis and that the correct diagnosis should have been an aggravation of her underlying spondylolisthesis.

By decision dated June 11, 2003, the Office rejected appellant’s claim finding that the medical evidence did not establish that her degenerative spondylolisthesis resulted from her federal work activities. The Office found that appellant’s physicians did not sufficiently explain how her degenerative spondylolisthesis was caused or aggravated by her work activities.

On June 11, 2003 the Office combined appellant’s cases numbered 11-2015930, 11-0180077 and 11-0171638 under one master number.

In a June 20, 2003 report Dr. Joseph J. Chen, a Board-certified orthopedic surgeon, diagnosed chronic mechanical and myofascial low back pain, status post work-related injury and subsequent L5-S1 fusion for spondylolisthesis. It was his opinion that appellant’s current episode of back pain was related to the initial work injury, but he did not provide medical rationale to explain his conclusion. He provided activity restrictions.

By letter dated June 26, 2003, appellant again requested reconsideration of the April 25, 2003 decision.

By decision dated July 9, 2003, the Office denied modification of the prior April 25, 2003 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that appellant's lumbar sprain injury had resolved within four to six weeks and that the medical evidence did not support the causal relationship of her back muscle strain injury and her degenerative condition.

In a letter dated October 7, 2003, appellant requested reconsideration and alleged that she had an inactive congenital defect that became symptomatic as a result of her 1999 injury. She alleged that her 2000 "injury" was also an aggravation of her underlying condition. Appellant submitted a September 6, 2003 report from Dr. Ketcham, who stated that after reviewing appellant's records, it was likely that the spondylolisthesis at L5-S1 was a preexisting condition that chose to become symptomatic.

In a September 30, 2003 report, Dr. Chen opined that appellant's work injury caused back pain and presumably the inactive spondylolisthesis to become symptomatic. He opined that her current episode of low back pain and chronic L5 radiculopathy were related to her initial work injury, but he indicated that the injury did not likely cause the spondylolisthesis;

By decision dated November 28, 2003, the Office denied modification of the July 9, 2003 decision, finding that Dr. Ketcham's report did not support causal relationship. The Office also found that Dr. Chen's report was of diminished probative value as he assessed causality based on a temporal relationship.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed, (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹ The medical opinion must be one of reasonable medical certainty¹⁰ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

Medical conclusions unsupported by rationale are of diminished probative value.¹² While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. Medical reports not containing

⁹ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

¹⁰ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹² *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.¹³

It is well established that when a factor of employment aggravates, accelerates or otherwise combines with a preexisting and nonoccupational pathology, the employee is entitled to compensation.¹⁴ Under the Federal Employees' Compensation Act,¹⁵ when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹⁶

ANALYSIS

The medical evidence establishes that appellant has a congenital condition of spondylolisthesis of the lower lumbar spine at L5-S1. Appellant contends that factors of her federal employment, recontinuous lifting and carrying heavy 35-pound mailbags, trays and tubs, aggravated or accelerated her degenerative spondylolisthesis to result in disability in March 1999 and again in May 2000. However, the Board finds that the medical reports submitted to the record are not sufficient to establish the claim.

The May 26, 2000 radiology report identified facet osteoarthritis, hypertrophy and subluxation along with a Grade 1, L5-S1 degenerative spondylolisthesis and spur formation of the vertebral endplates, complicated by shallow, intraforaminal bilateral disc herniations which were on the basis of advanced facet osteoarthropathy as the joints were subluxed and degenerated. The radiologist, however, did not provide any opinion on causal relationship or aggravation of the findings with appellant's employment. This report, therefore, does not support appellant's aggravation claim.

On July 5, 2000 Dr. Ingram noted that appellant's CAT scan results demonstrated L5-S1 spondylolisthesis and foraminal stenosis but he did not relate any aggravation or exacerbation of this condition as being related to her job duties in her federal employment. Therefore, this report does not support appellant's claim.

In a November 1, 2000 report, Dr. Igram stated that appellant's spondylolisthesis developed overtime with repeated wear and tear and was not something that typically developed with a specific injury. He provided a speculative opinion stating that it was certainly possible that repetitive activity over 12 years could increase the nature of the problem. He did not adequately explain how or why this occurred and he couched his opinion in speculative terms. Therefore, this opinion is insufficient to establish appellant's aggravation claim.

¹³ *Judith J. Montage*, 48 ECAB 292 (1997).

¹⁴ *Chris Wells*, 52 ECAB 445 (2001).

¹⁵ 5 U.S.C. § 8101 *et seq.*

¹⁶ *See Raymond W. Behrens*, 50 ECAB 221 (1999).

A March 9, 2001 report from Dr. Ketchum, opined that appellant's spondylolisthesis was likely preexisting and could be exacerbated by her ongoing work activity. This report is also speculative and lacks any rationale explaining any conclusion on causal relation. Therefore, it is insufficient to establish appellant's claim.

In an August 7, 2001 report, Dr. Troll indicated that the nature of appellant's back complaints were discovered to be degenerative in nature. Regarding the question of whether the condition was work related, Dr. Troll provided a speculative answer, stating that appellant's job could have predisposed her to back problems. This answer was speculative and without medical rationale.

In a September 6, 2001 report, Dr. Troll opined that it was "probable" that appellant's back condition of spondylolisthesis was aggravated by her work activity and "plausible" that it was "likely" due to repetitive bending and forward flexion motions. This report is speculative on its face and lacked any medical rationale for its conclusions.

In a March 5, 2003 report, Dr. Kuhle opined that appellant's spondylolisthesis was congenital, but explained that the continual walking and weight carrying related to her employment over the preceding 12 years certainly compounded the problem. She also noted that she did not believe that adding 35 pounds to appellant's back on a daily basis would create a situation where appellant would have more acceleration of her degenerative joint disease or reexacerbations of her chronic back problems. This report does not support appellant's claim as Dr. Kuhle negated any acceleration claim or relationship.

Thereafter, by report dated September 6, 2003 Dr. Ketchum opined, after reviewing appellant's records, that it was "likely" that her spondylolisthesis at L5-S1 was preexisting but became symptomatic due to her repetitive employment duties. This report lacks any rationale for the stated condition and therefore is of diminished probative value.

Dr. Chen provided a September 30, 2003 report in which he indicated that appellant's injury did not "likely" cause the spondylolisthesis and that her spondylolisthesis was "presumably" inactive prior to the incident. His report is of diminished probative value as it couched in speculative terms and did not provide medical explanation as to how or why, mechanically or pathologically, appellant's work duties aggravated her preexisting condition.

The Board finds that appellant has not satisfied her burden of proof to establish her degenerative spondylolisthesis was caused by factors of her federal employment or to her accepted low back strain of March 15, 1999.

CONCLUSION

The decisions of the Office dated April 25, June 11, July 9 and November 28, 2003, are proper. The Board finds that appellant has not established that she sustained an aggravation or acceleration of her underlying preexisting spondylolisthesis causally related to factors of her federal employment or to her employment-related low back strain sustained on March 15, 1999.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 28, July 9 June 11 and April 25, 2003 be affirmed.

Issued: November 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member