

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

JEFFREY VICTOR JOHNSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sneedville, TN, Employer**

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**Docket No. 04-1617
Issued: November 16, 2004**

Appearances:
Floyd W. Rhea, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On August 7, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 28, 2004 which denied his claim. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained a back condition causally related to factors of his federal employment. On appeal appellant generally contends that the reports of John D. Snowden, a physician's assistant, should be considered and that, as the evidence of record was sufficient to establish disability retirement, it should be sufficient to establish his claim.

FACTUAL HISTORY

On August 7, 2003 appellant, then a 58-year-old rural carrier, filed a Form CA-1, traumatic injury claim, alleging that on August 6, 2003 he felt a sharp pain in his left lower back

and both legs when he reached for a parcel in the rear seat of his vehicle. By letter dated August 21, 2003, the Office informed appellant of the type evidence needed to support his claim.

In response, appellant submitted medical evidence including an August 6, 2003 treatment note in which Mr. Snowden, a physician's assistant, noted the history of an employment injury that day when appellant experienced sharp pain while twisting to deliver mail with subsequent leg pain. Mr. Snowden noted that appellant had recent back surgery and physical findings of slow change in position and difficulty with gait. He diagnosed back pain with radiculopathy to both legs. A magnetic resonance imaging (MRI) scan report dated August 20, 2003, was read by Dr. Kelly J. Cassidy, Board-certified in radiology, as showing a new left-sided disc protrusion at L4-5 with apparent left L5 nerve root compression, prior left-sided laminotomies at L3-4 and L4-5,¹ disc degeneration in the lumbar spine, severe at L5-S1 with no evidence of central stenosis, and a nonspecific osseous lesion at T-12. Dr. John A. Short, a family practitioner, provided a disability slip stating that appellant could not work on August 21, 2003 and it was undetermined when he could return.² In an August 26, 2003 report, Mr. Snowden noted that appellant could return to light-duty work with restrictions to his physical activity. In a report dated August 29, 2003, Dr. Gregory Corradino, a Board-certified neurosurgeon, noted the history of injury on August 6, 2003 and appellant's complaints of pain and numbness radiating into the legs. The straight leg raising maneuver in the sitting position was positive on the left, negative on the right. The physician noted the MRI scan findings and diagnosed possible recurrent herniated disc at L4-5 on the left and low back and bilateral leg pain. Dr. Corradino attached a disability slip advising that appellant should be off work for an undetermined period, a prescription for physical therapy, and a form report noting the above diagnoses and advising that the prognosis was guarded.

By decision dated September 22, 2003, the Office denied the claim. The Office implied that the August 6, 2003 incident occurred but found that the medical evidence of record did not contain an opinion regarding the cause of appellant's condition. Appellant filed an appeal with the Board, and in an order dated November 28, 2003, the Board dismissed the appeal at appellant's request.³ Appellant requested reconsideration of the September 22, 2003 Office decision and resubmitted Dr. Corradino's August 29, 2003 report and a September 30, 2003 report in which Mr. Snowden repeated the history of injury, MRI scan findings, and advised that the "injuries were felt to be from the recent incident."

In a decision dated December 18, 2003, the Office denied appellant's reconsideration request finding that, as Dr. Corradino's August 29, 2003 report had previously been considered, it was duplicative. The Office further found that Mr. Snowden's reports were irrelevant as he was not deemed to be a physician under the Federal Employees' Compensation Act.⁴

¹ There is no indication in the record that appellant's prior back injury which required surgery was employment related.

² Appellant apparently stopped work on August 21, 2003.

³ Docket No. 04-121.

⁴ 5 U.S.C. §§ 8101-8193.

On January 29, 2004 appellant requested reconsideration and submitted additional evidence including a December 24, 2003 report in which Dr. Corradino described the August 6, 2003 incident and advised that appellant's symptoms had progressively worsened. He stated that lumbar myelogram and postmyelographic computerized tomography showed evidence of appellant's prior surgery with a small disc protrusion at the L3-4 level causing some L4 nerve root compression at the site of his previous surgery. Dr. Corradino concluded:

“Given [appellant's] history, and given the fact that he did return to employment after his surgery and was working at regular duty without significant difficulty, we feel that his current symptoms are arising from the injury noted above.”

In a January 20, 2004 report, Dr. Short noted that Mr. Snowden worked in his office. He reviewed Mr. Snowden's August 6, 2003 treatment note and the MRI scan findings and noted that appellant was referred to Dr. Corradino who advised that, based on his myelogram, surgery was not warranted. Appellant also resubmitted Dr. Corradino's August 29, 2003 report and Mr. Snowden's September 30, 2003 report.

In a decision dated April 28, 2004, the Office denied modification of the prior decision. The Office stated that no new evidence had been received, noting that appellant merely submitted the August 29, 2003 report from Dr. Corradino and the September 30, 2003 report from Mr. Snowden and advised that both had been reviewed previously. The Office nonetheless reviewed the case on the merits and denied that appellant sustained an employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.⁶

⁵ Gary J. Watling, 52 ECAB 357 (2001).

⁶ Gloria J. McPherson, 51 ECAB 441 (2000).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

In this case, the Office implied, and the Board finds, that the August 6, 2003 incident occurred. Regarding appellant's contention on appeal that Mr. Snowden's reports constitute relevant, probative medical evidence, reports from a physician's assistant are not considered medical evidence as a physician's assistant is not considered a physician under the Act,¹⁰ and his reports therefore are not considered probative medical evidence. Likewise, a determination made for disability retirement purposes is not determinative of the extent of physical disability or impairment for compensation purposes under the Act.¹¹ Thus, a finding of disability retirement in appellant's case would not be determinative regarding entitlement under the Act.¹²

The Board, however, finds that the Office erred by failing to consider medical evidence submitted and received by the Office prior to the April 28, 2004 decision. As the decisions of the Board are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of its final decision be addressed by the Office.¹³ On September 22, 2003 the Office initially denied appellant's claim, and by decision dated December 18, 2003 denied his reconsideration request. Appellant thereafter again requested reconsideration and submitted additional medical evidence including a December 24, 2003 report from Dr. Corradino and a January 20, 2004 report from Dr. Short. In its April 28, 2004 decision, the Office stated that the only evidence received with appellant's reconsideration request was the August 29, 2003 report of Dr. Corradino and Mr. Snowden's September 30, 2003 report, both of which had been reviewed in prior decisions.

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ 5 U.S.C. § 8101(2); *Ricky S. Storms*, 52 ECAB 349 (2001).

¹¹ *James E. Norris*, 52 ECAB 93 (2000).

¹² The Board notes that the record does not contain specific information regarding appellant's retirement.

¹³ *Willard A. McKennon*, 51 ECAB 145 (1999); *William A. Couch*, 41 ECAB 548 (1990).

The Board finds the August 29, 2003 report from Dr. Corradino insufficient to meet appellant's burden to establish that his back injury is employment related as it does not contain an opinion regarding the cause of appellant's condition, and medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ Furthermore, as discussed previously, Mr. Snowden's reports do not constitute relevant, probative medical evidence as a physician's assistant is not considered a physician under the Act.¹⁵ However, it is clear in the case at hand that the Office did not consider Dr. Corradino's December 24, 2003 report or Dr. Short's January 20, 2004 report prior to the issuance of its April 28, 2004 decision. The Board, therefore, will set aside the Office's April 28, 2004 decision and remand the case to the Office to fully consider appellant's evidence pertaining to whether he established that he sustained an injury causally related to the August 6, 2003 employment incident. After such development as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for decision as the Office failed to properly consider all evidence of record.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 28, 2004 be set aside and the case remanded for further action consistent with this decision.

Issued: November 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁵ *Supra* note 10.