

Appellant submitted medical reports from Dr. Charles J. Hipp, Board-certified in internal medicine and preventive medicine, and the results of a magnetic resonance imaging (MRI) scan done on May 6, 2003. The scan showed chronic multi-level lumbar disc degeneration, a small herniated disc at L5-S1, a moderate herniated disc at L4-5 and bulging disc at L3-4 and L2-3. In a May 5, 2003 report, Dr. Hipp stated that appellant had had significant low back pain with pain down the left leg since late December when he woke up, went to the bathroom, misstepped and twisted his back. In a May 8, 2003 report, Dr. Hipp noted the two herniated discs shown on the MRI scan and diagnosed mechanical lumbar pain, lumbar disc and lumbar radiculitis, diagnoses he repeated in a May 21, 2003 report. Dr. Hipp prescribed work tolerance limitations and the employing establishment provided work within these limitations.

In response to an Office request for further information, appellant submitted a statement attributing his low back condition to the twisting and turning required to case mail and to deliver it in his postal truck. He also described prior injuries to his low back, starting with a February 3, 1993 nonwork incident where a hung-up tree brushed against his back, followed by a work injury on January 17, 1995 when he slipped and fell on a porch striking his low back on the edge of a cement step and sliding down eight steps, an August 6, 2002 nonwork incident in which he turned to avoid a lady in a wheelchair and felt pain in his left hip and an October 25, 2002 incident when he arose during the night to go to the bathroom and felt a very sharp pain go down his left leg when he pivoted and turned to the right. Appellant stated that he started feeling pain in his left hip and leg on December 30, 2002 for which he received chiropractic treatment and that his pain became unbearable in May 2003, leading him to seek treatment by Dr. Hipp. Appellant submitted a June 17, 2003 report from Dr. Hipp, who stated:

“[Appellant] presented to my office on May 5, 2003 with a history of significant low back pain dating back to late December 2002. His symptoms had been coming on for a time and worsened apparently one morning when he got up to go to the bathroom early. [Appellant] indicates that the twisting in his work as a letter carrier and his mounted route is what primarily caused his low back pain.”

By decision dated August 12, 2003, the Office found that the medical evidence did not establish that appellant’s claimed medical condition was causally related to accepted work events.

On December 22, 2003 appellant requested reconsideration and clarified that the bathroom incident occurred on December 25, 2002 and resulted in chiropractic treatment. He returned to work the day after the January 17, 1995 slip and fall incident; and experienced infrequent minor pain down his left leg since then; and a knot of pain in his left hip. Appellant submitted additional medical evidence, including treatment notes from Dr. Hipp from May 8 to June 30, 2003. In a September 22, 2003 report, Dr. Kirkham B. Wood, a Board-certified orthopedic surgeon, set forth a history of “pain in the small of his back and the legs and numbness since 1995, but it has been much more problematic since this past winter. He states that it worsened at that time when he got up in the evening to go to the bathroom.” Dr. Wood diagnosed herniated nucleus pulposus, stated that the L4-5 disc protrusion was the one that was symptomatic and recommended consideration of surgical decompression. On October 1, 2003 Dr. Wood performed a laminotomy and discectomy at L4-5.

In a September 5, 2003 report, Dr. Richard M. Powell, a Board-certified family practitioner, set forth a history of the onset of low back pain around Christmas, an exacerbation about three weeks ago when appellant experienced an increase of pain when he moved away from a truck he was leaning against and a marked increase and change in his pain during the last three days for no apparent reason. In a November 18, 2003 report, Dr. Powell stated:

“[Appellant] relates this injury, by the way to a fall which occurred on January 17, 1995.... He fell at that time and he states that he can clearly relate the onset of his back pain to this injury. [Appellant] apparently fell on icy steps. He apparently strained his muscles intensely in the attempt to avoid falling. Nevertheless, [appellant] struck his lumbar area against the steps and slid down icy steps. He states that he’s had back pain ever since off and on, but he has elected to work with it and was able to work until just recently. I told [appellant] that it’s certainly a reasonable supposition that he did injure a disc at that time and could very well have had intermittent pain off and on ever since, but there’s certainly no way we can prove, with certainty, that that fall was causal to the situation which resulted in the recent surgery. I certainly believe it’s plausible, however, and there is a temporal connection.”

By decision dated April 6, 2004, the Office denied modification of the August 12, 2003 decision.

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.¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.² 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.³

¹ See *Arturo A. Adame*, 49 ECAB 421 (1998); *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *Froilan Negron Marrero*, 33 ECAB 796 (1982).

³ *Gloria J. McPherson*, 51 ECAB 441 (2000).

ANALYSIS

Appellant's claim implicated that the twisting and turning required in his position of letter carrier as the cause of the herniated and bulging discs in his low back. The Board finds, however, that he has not submitted rationalized medical evidence sufficient to establish his claim.

Dr. Hipp, appellant's physician beginning May 5, 2003, stated in a June 17, 2003 report, that appellant indicated that his twisting at work was what primarily caused his low back pain. Dr. Hipp, though, does not provide his, as opposed to appellant's, opinion that twisting at work caused or aggravated appellant's low back condition, in this or any other of his reports. Dr. Wood, the Board-certified orthopedic surgeon, who performed surgery on appellant's low back on October 1, 2003, noted that he had had low back and leg pain since his 1995 fall at work, but did not indicate that the herniated disc for which he performed surgery was related to the 1995 fall or to any other factors of employment. The effects of the traumatic injury on January 17, 1995 would better be adjudicated as part of the claim appellant filed for the traumatic injury, but the Office, at least in its April 6, 2004 decision, adjudicated the January 17, 1995 injury as part of the present claim for an occupational disease.

Dr. Powell's November 18, 2003 report concludes that, "it's certainly a reasonable supposition that he did injure a disc" on January 17, 1995 and that it was "plausible" that this fall was causal to the surgery on October 1, 2003. This medical opinion is too speculative to meet appellant's burden of proof.⁴ Dr. Powell acknowledges that causal relation cannot be proven with certainty. His statement that there is a temporal relationship ignores the history of subsequent nonwork back injuries on August 6 and December 25, 2002 and does not explain how appellant could work as a letter carrier for eight years after he herniated a disc. Dr. Powell's November 18, 2003 report is not sufficient to meet appellant's burden of proof.

CONCLUSION

The medical evidence is not sufficient to meet appellant's burden of proving that his low back condition is causally related to his employment.

⁴ See *Charles A. Massenzo*, 30 ECAB 844 (1979).

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2004 and August 12, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 29, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member