

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

DAVID G. BUELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Orlando, FL, Employer**

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**Docket No. 05-1844
Issued: December 6, 2005**

Appearances:
David G. Buell, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On September 6, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' July 7, 2005 merit decision. Under 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 established that his lower back condition was causally related to his federal employment.

FACTUAL HISTORY

On May 3, 2001 appellant, a 50-year-old letter carrier, sustained injuries to his neck and lower back when he was injured in a motor vehicle accident. The Office accepted the conditions of cervical and lumbar strains. On May 17, 2004 appellant filed a Form CA-2 claim for benefits, alleging that his preexisting lower back condition was aggravated by factors of his employment. Appellant did not submit any medical evidence in support of his request.

By letter dated July 21, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional medical evidence.

By decision dated August 21, 2004, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that his preexisting lower back condition was aggravated by factors of his federal employment.

By letter dated August 26, 2004, appellant's representative requested a hearing, which was held on April 26, 2005. In support of his request, appellant submitted reports dated June 24, 2003, October 12, 2004 and May 23, 2005 from Dr. Michael J. Broom, a Board-certified orthopedic surgeon. In his June 24, 2003 report, Dr. Broom stated:

“[Appellant] has ongoing back and radiating radicular leg pain and compression, and does have diagnostic studies demonstrating nerve root compression.... [Appellant] has had progressive symptoms for over two years now and failed to respond to conservative treatment which has included medications, physical therapy, TENS [transcutaneous electrical nerve stimulation] unit, epidural steroid injections. He is quite limited with regard to bending, lifting, twisting activities. He also developed some increased pain with prolonged walking. I feel that there is objective documentation to justify his limitations that prevent him from working as a postal worker.”

Dr. Broom noted that he had offered appellant the option of having surgery to ameliorate his back condition. In his October 12, 2004 report, Dr. Broom stated:

“I do feel that [appellant's] May 3, 2001 motor vehicle accident did cause a permanent aggravation of his underlying lumbar degenerative condition. In addition I feel his work demands have contributed to increased symptoms, emanating from the lumbar condition that was aggravated by the May [3], 2001 injury.”

Finally, in his May 23, 2005 report, Dr. Broom reiterated his previous findings and conclusions regarding appellant's low back condition and stated:

“I was aware [appellant] is a postal carrier and had returned to work delivering mail and in that job had to spend several hours separating his mail at the postal facility on his feet, but also had to drive to numerous locations delivering the mail. I am aware that his physical duties required him to sit on the right side of his vehicle and upon a stop, rotate and twist to the left, picking up bundles of mail and then twist to the right and put them in mailboxes, also having to get out of the postal vehicle that was several feet off the ground on many occasions which caused forces to be exerted on his spine.

“It is my opinion that these duties would be the mechanism that aggravated and worsened [appellant’s] underlying condition and would cause him to have increased pain and difficulty in working in an uninterrupted basis. These types of physical activities are ones that can certainly exacerbate the conditions that [appellant] has, and can worsen his preexisting condition.”

By decision dated July 7, 2005, an Office hearing representative affirmed the August 21, 2004 Office decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral thumb condition and her federal employment. This burden includes providing medical evidence from a physician who

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates his claimed lower back condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Dr. Bloom, but none of these reports provided a probative, rationalized medical opinion that the claimed lower back condition was causally related to employment factors. Dr. Bloom noted that appellant had experienced ongoing back and radiating radicular leg pain, with progressive symptoms lasting more than two years; these symptoms had failed to respond to medications, physical therapy, TENS unit and epidural steroid injections. He advised that appellant had limitations with regard to activities requiring bending, lifting, and twisting, and had also developed some increased pain with prolonged walking. Dr. Broom opined that there was objective evidence justifying the limitations which prevented him from performing his usual work duties.

Dr. Broom further opined that appellant's May 3, 2001 motor vehicle accident caused a permanent aggravation of his underlying lumbar degenerative condition, and stated that his work demands had contributed to increased symptoms; these symptoms had emanated from the lumbar condition which was aggravated by the May 3, 2001 injury. He stated that appellant's duties required him to separate mail while standing on his feet for several hours at a time, in addition to driving to numerous locations making deliveries. Dr. Broom further stated that appellant's duties also required him to sit on the right side of his vehicle and upon a stop, rotate and twist to the left, picking up bundles of mail and then twist to the right and put them in mailboxes; he noted in addition that appellant had to get out of the postal vehicle that was several feet off the ground on many occasions, which caused force to be exerted on his spine. He concluded that these duties constituted the mechanism which aggravated and worsened his underlying condition and caused him to experience increased pain and difficulty when he attempted to work on an uninterrupted basis, and were the types of physical activities which could certainly exacerbate the conditions appellant experienced and could worsen his preexisting condition.

The medical reports appellant submitted did not contain a probative, rationalized medical opinion that the claimed lower back condition was causally related to employment factors.

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Id.*

These reports are therefore of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed lower back condition was currently affected by or related to factors of employment.⁷ Although Dr. Bloom diagnosed a progressively worsening lower back condition caused by employment factors, he failed to provide a probative, rationalized medical opinion to establish that appellant's lower back condition was causally related to any of his work duties. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ None of Dr. Bloom's reports contained an opinion which sufficiently described the medical process through which appellant's employment would have been competent to cause the claimed lower back condition. Dr. Broom's opinion was of limited probative value for the further reason that it is generalized in nature and equivocal in that he was not able to state conclusively that appellant's lower back was causally related to his employment as a letter carrier. The Office therefore properly found that appellant did not sustain a lower back condition in the performance of duty.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed lower back condition was causally related to his employment. The Board therefore affirms the Office's July 7, 2005 decision, affirming the August 21, 2004 Office decision denying compensation for a claimed lower back condition.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a causal relationship between his claimed lower back condition and his employment.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 6, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board