

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

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**GAIL L. DUGAS, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Troy, MI, Employer**

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**Docket No. 04-2207  
Issued: February 4, 2005**

*Appearances:*  
*Bobbi Korenic, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On September 9, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 7, 2004, denying her claim for a back injury on November 4, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a back injury on November 4, 2000 causally related to factors of her employment.

**FACTUAL HISTORY**

On November 6, 2000 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on November 4, 2000 she injured her lower back and left leg when she turned

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<sup>1</sup> Also within the Board's jurisdiction is an Office decision dated April 27, 2004, denying appellant's request for reconsideration.

while casing mail. On August 25, 2002 appellant filed a claim for a recurrence of disability on October 6, 2001.

In a report dated November 6, 2000, Dr. Michael J. Kenneson, a Board-certified family practitioner, indicated that appellant was casing mail on November 4, 2000 when she “rotated” and developed lower back pain. His diagnosis was “low back pain.”

In a disability certificate dated November 10, 2000, Dr. Kenneson indicated that appellant was able to return to work on November 13, 2000.

In a December 18, 2001 report, Dr. Kenneson stated that appellant had a history of low back pain during the past year. He indicated that she initially developed pain in November 2000 while lifting mail at work and was reevaluated between October 9 and November 26, 2001 for continued back pain. Dr. Kenneson stated that a magnetic resonance imaging (MRI) scan revealed spondylolisthesis at L5-S1 with a disc bulge.<sup>2</sup> He opined that appellant’s back pain was related to the pain she experienced one year earlier.

In a January 11, 2002 report, Dr. Kenneson diagnosed anterolisthesis. He checked the block marked “yes,” indicating that the condition was caused by the incident on November 4, 2000 when appellant was casing mail.

By decision dated October 22, 2002, the Office denied appellant’s claim on the grounds that the evidence of record did not establish that she sustained a back injury as a result of the November 4, 2000 employment incident. The Office also denied appellant’s claim for a recurrence of disability on October 6, 2001, stating that there can be no claim for a recurrence if the original disability claim is denied.

By letter dated November 16, 2002, appellant requested an oral hearing before an Office hearing representative and submitted additional evidence.

In a report dated January 24, 2003, Dr. Kenneson stated that on November 4, 2000 appellant had lower back pain, primarily on the left side, with radicular symptoms into the left leg when she planted her feet and twisted. He stated that her symptoms resolved “for the most part” until October 15, 2001 when she again experienced low back pain. Dr. Kenneson indicated that x-rays revealed Grade 1 anterolisthesis at L5-S1 with a disc bulge and an MRI scan revealed the same condition with pronounced disc space narrowing and discogenic changes. He opined that the November 4, 2000 employment incident exacerbated appellant’s anterolisthesis.

On May 30, 2003 a hearing was held at which appellant appeared.

By decision dated and finalized August 21, 2003, the Office hearing representative affirmed the Office’s October 22, 2002 decision on the grounds that the medical evidence did not

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<sup>2</sup> An MRI scan report dated October 23, 2001 revealed Grade 1 anterolisthesis at L5-S1 with disc bulge or pseudo-bulge, without spinal stenosis but with significant foraminal stenosis.

establish that appellant's back condition on November 4, 2000 was caused or aggravated by factors of her employment.

On February 10, 2004 appellant requested reconsideration.

By decision dated April 27, 2004, the Office denied appellant's reconsideration request on the grounds that she had failed to submit any new evidence in support of her request.

On May 2, 2004 appellant requested reconsideration and submitted additional evidence.

In a report dated October 14, 2003, Dr. Kenneson stated that he evaluated appellant on November 6, 2000 for low back pain radiating into her left leg after she twisted while her feet were planted at work on November 4, 2000. He stated that she was diagnosed with a lumbar strain. Dr. Kenneson stated that x-rays obtained on November 6, 2000 revealed disc space narrowing at L4-5 and L5-S1 and an L5-S1 spur and stenosis. He stated:

"None of these findings are attributable to her twisting incident; however, they would help explain why she developed so much discomfort from a simple maneuver. [Appellant] subsequently developed another exacerbation of her symptoms on October 15, 2001. She presented to the office and an x-ray was obtained which now revealed [G]rade 1 anterolisthesis at L5-S1 with disc bulge. There was no significant spinal stenosis but foraminal stenosis was evident. [Appellant] related this bout of back pain to again casing mail. She was prescribed medication and underwent physical therapy. [Appellant] has subsequently been treated here for persistent back pain."

By decision dated June 7, 2004, the Office denied modification of the August 21, 2003 decision on the grounds that the medical evidence failed to establish that appellant's back condition was causally related to her November 4, 2000 employment incident.

### **LEGAL PRECEDENT**

To establish a causal relationship between appellant's back condition and the November 4, 2000 employment incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.<sup>3</sup>

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<sup>3</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>4</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.<sup>5</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>6</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>7</sup>

### ANALYSIS

In a November 6, 2000 form report, Dr. Kenneson indicated that appellant was casing mail on November 4, 2000 when she rotated her body and developed lower back pain. He diagnosed "low back pain." However, pain is not a definitive diagnosis, only a symptom. Findings of pain or discomfort alone do not establish fact of injury.<sup>8</sup> Therefore, this report is not sufficient to establish that appellant sustained a specific back injury on November 4, 2000 causally related to her employment.

In a December 18, 2001 report, Dr. Kenneson stated that appellant initially developed back pain in November 2000 while lifting mail at work and had continued back pain in October 2000. Dr. Kenneson indicated that an October 23, 2001 MRI scan revealed spondylolisthesis at L5-S1 with a disc bulge. He opined that appellant's back pain was related to the pain she experienced one year earlier. However, he did not provide a specific diagnosis when he examined appellant on November 6, 2000. Additionally, the MRI scan was obtained almost one year after the November 4, 2000 employment incident and Dr. Kenneson did not provide any rationalized medical opinion explaining how appellant's spondylolisthesis or disc bulge in 2001 was caused or aggravated by the November 4, 2000 work incident. Therefore, this report is not sufficient to establish that she sustained a work-related back injury on November 4, 2000.

In a January 11, 2002 form report, Dr. Kenneson diagnosed anterolisthesis. He checked the block marked "yes," indicating that the condition was caused by the incident in November 4, 2000 when appellant was casing mail. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.<sup>9</sup> Without any

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<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>5</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>6</sup> *Edward E. Olson*, 35 ECAB 1099 (1984).

<sup>7</sup> *Robert A. Boyle*, 54 ECAB \_\_\_\_ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB \_\_\_\_ (Docket No. 01-1835, issued August 13, 2002).

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.3(d) (June 1995).

<sup>9</sup> *Calvin E. King*, 51 ECAB 394 (2000).

explanation or rationale, such a report is insufficient to establish causal relationship.<sup>10</sup> Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated January 24, 2003, Dr. Kenneson stated that on November 4, 2000 appellant had lower back pain with radicular symptoms into the left leg when she planted her feet and twisted. He stated that her symptoms resolved "for the most part" until October 15, 2001 when she again experienced low back pain. Dr. Kenneson indicated that x-rays and an MRI scan obtained in 2001 revealed Grade 1 anterolisthesis at L5-S1 with a bulging disc, pronounced disc space narrowing and discogenic changes. He opined that the November 4, 2000 work incident exacerbated appellant's anterolisthesis, disc bulge and foraminal stenosis, causing pain. However, Dr. Kenneson did not provide a diagnosis for the November 4, 2000 employment incident or sufficient medical rationale explaining how the twisting incident at work on November 4, 2000 aggravated appellant's underlying anterolisthesis, bulging disc and stenosis. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a work-related back injury on November 4, 2000.

In an October 14, 2003 report, Dr. Kenneson stated that he evaluated appellant on November 6, 2000 for low back pain radiating into her left leg after she twisted her body on November 4, 2000. He indicated that she was diagnosed with a lumbar strain at that time. However, there is no medical evidence dated on or about November 4, 2000 that contains a diagnosis of a lumbar strain. Dr. Kenneson stated that x-rays obtained on November 6, 2000 revealed disc space narrowing at L4-5 and L5-S1. However, there is no November 6, 2000 x-ray report of record. He stated that appellant developed an exacerbation of her symptoms on October 15, 2001 when x-rays revealed Grade 1 anterolisthesis at L5-S1 with disc bulge and foraminal stenosis. Dr. Kenneson indicated that appellant attributed her condition in 2001 to the November 4, 2000 employment incident. In his October 14, 2003 report, Dr. Kenneson did not explain why he did not furnish the diagnosis of lumbar strain for appellant's claimed November 4, 2000 back condition in his earlier reports or why there is no November 6, 2000 x-ray report among the medical evidence submitted. He did not provide a rationalized medical opinion explaining how appellant's November 4, 2000 employment incident caused or aggravated her underlying spinal conditions, anterolisthesis at L5-S1, disc bulge and stenosis. Due to these deficiencies, Dr. Kenneson's reports are not sufficient to establish that appellant sustained a back injury on November 4, 2000 causally related to factors of her employment.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a back injury on November 4, 2000 causally related to factors of her employment.

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<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 7 and April 27, 2004 are affirmed.

Issued: February 4, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member