

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

THOMAS E. BRAFFORD, Appellant)
and) Docket No. 04-2246
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 25, 2005
Ashland, OH, Employer)

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of the 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 September 13, 2004 appellant filed a timely appeal of an August 19, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a December 1, 2003 decision finding that appellant had not established a back injury causally related to his federal employment. 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 a back injury causally related to factors of his federal employment as a letter carrier.

FACTUAL HISTORY

On September 20, 2003 appellant, then a 46-year-old letter carrier, filed an occupational disease claim for compensation (Form CA-2) alleging that he sustained a ruptured disc as a result of his federal employment. Appellant indicated that he walked 7 to 10 miles a day as part of his job; he reported December 14, 2002 as the date he became aware of the condition.

Appellant submitted a report dated January 17, 2003 from Dr. Thomas Hawk, an orthopedic surgeon, indicating that on that date appellant underwent a partial laminectomy of L5-S1. Dr. Hawk diagnosed herniated nucleus pulposus, L5-S1 right and extruded fragment causing right L5 radiculopathy. The report noted that in early December appellant had bent over to pick up a letter and could not straighten up. Dr. Hawk also noted that appellant had a prior lumbar laminectomy over 20 years ago.

By letter dated September 29, 2003, the Office requested that appellant submit additional factual and medical evidence with respect to his claim. In a decision dated December 1, 2003, the Office denied the claim on the grounds that the factual and medical evidence was insufficient to establish the claim.

Appellant requested a hearing before an Office hearing representative, which was held on June 22, 2004. At the hearing appellant submitted an undated Form CA-1 (notice of traumatic injury and claim for continuation of pay/compensation) stating that he bent over to pick up a letter and he could not stand up straight. Appellant testified that the incident occurred on December 14, 2002 and he had completed the form in June 2003 but it had not been filed. He stated that his condition had been getting progressively worse prior to the December 14, 2002 incident. Appellant also briefly noted that his job involved twisting, pulling and lifting. He submitted a July 1, 2003 decision from the Department of Veterans Affairs with respect to entitlement to disability benefits.

By decision dated August 19, 2004, the hearing representative affirmed the denial of the claim. The hearing representative accepted that an incident occurred on December 14, 2002 and that appellant's job involved walking, lifting, twisting and pulling, but found that the medical evidence was insufficient to establish an injury causally related to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.

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

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.³ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.⁴ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁵

ANALYSIS

In the present case, the record contains both a traumatic injury claim and an occupational disease claim. Appellant appeared to be alleging that his job duties had caused a progressively worsening back condition and on December 14, 2002 he bent over and had severe back symptoms that prevented him from straightening up. The hearing representative accepted the factual allegations with respect to job duties and a December 14, 2002 incident; the issue is whether the medical evidence is sufficient to establish causal relationship between a diagnosed condition and the identified incident or employment factors. In this regard, the Board may review only the evidence that was before the Office at the time of the final decision being reviewed.⁶

The only medical evidence before the Office was the January 17, 2003 surgical report, which noted that appellant reported bending over and having back symptoms but did not provide a reasoned medical opinion on causal relationship between the diagnosed herniated L5-S1 disc and appellant's federal employment. The report is therefore of diminished probative value to the issue presented. The decision from the Department of Veterans Affairs regarding appellant's disability benefits is not medical evidence, and the findings of an administrative agency with respect to entitlement to benefits under a specific statutory authority is not determinative of entitlement to compensation under the Act.⁷ It is appellant's burden of proof to submit medical evidence that is sufficient to establish the claim and the Board finds that appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant did not submit probative medical evidence on causal relationship between a back condition and his federal employment.

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

⁴ See *Walter D. Morehead*, 31 ECAB 188 (1979).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

⁶ 20 C.F.R. § 501.2(c). The record indicates that additional evidence was submitted after the August 19, 2004 decision, which the Board cannot review on the current appeal.

⁷ *Burney L. Kent*, 6 ECAB 378 (1953) (findings by the Veterans Administration had no bearing on proceedings under the Act).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19, 2004 and December 1, 2003 are affirmed.

Issued: January 25, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member