

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

WESLEY N. OTTESEN, Appellant

and

**U.S. POSTAL SERVICE, SALT LAKE CITY
MANAGEMENT SECTION, Salt Lake City, UT,
Employer**

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**Docket No. 05-170
Issued: June 6, 2005**

Appearances:
Wesley N. Ottesen, pro se
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 October 22, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 14, 2004 which rejected his claim for a bulging disc, causally related to his April 25, 2001 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a bulging disc, causally related to an April 25, 2001 employment injury.

FACTUAL HISTORY

On April 12, 2002 appellant, then a 47-year-old letter carrier, filed a Form CA-2 claim for occupational disease alleging that he developed back pain, causally related to a lifting incident in his employment. Appellant claimed that he advised his supervisor of the condition on April 29, 2001 and that he first sought medical treatment on May 1, 2001. He did not stop work.

Appellant claimed that his back went out in May 2001 and he was unable to stand or walk. He sought treatment with his chiropractor and in two days he had improved enough to walk slowly. The employing establishment referred appellant to Work Med where he was released to return to work. He claimed that his job required constant and repetitive bending, lifting, twisting and turning, and that over the preceding year he had experienced great pain in his lumbar and thoracic spine regions. Appellant stated that he sought treatment with his chiropractor, but that now he was in constant pain.

On May 6, 2002 the employing establishment controverted appellant's claim noting that he did not properly complete his claim form, and that the accident report indicated that he experienced back discomfort after doing yard work on April 29, 2001. The employing establishment noted that, when appellant bent to pick up a hose, after lifting a lawnmower into a truck, he felt a pop in his back, and that therefore he was not in the performance of duty when he was injured.

On May 9, 2002 the Office received a May 1, 2001 physician's first report of work injury, in which Dr. Stephen Nelson, a physician of unlisted specialty, noted that appellant had a history of upper back pain and that he injured his back over time with repetitive use. Dr. Nelson noted that appellant had been working with new hampers for several months from which it was awkward to lift mail. He noted that appellant claimed that his back started bothering him on April 25, 2001 at work after repeatedly lifting tubs of mail off the floor. Dr. Nelson noted that after doing yard work that evening appellant was kneeling down hooking up a hose when he felt a pop in his lower lumbar area, and that thereafter he went to the chiropractor. Dr. Nelson diagnosed lumbosacral strain.

By letter dated May 13, 2002, the Office allotted appellant 30 days to submit additional factual and medical information.

On October 8, 2002 the Office received a magnetic resonance imaging (MRI) scan of appellant's lower back taken on May 15, 2002 which was reported by Dr. Wylie as demonstrating a left posterolateral bulge of the L5-S1 disc without true herniation or evidence of neuroforaminal encroachment, but with a possible small focal annular tear at the site of the bulging disc, and desiccation and minimal degenerative disc disease at L3-4 without herniation or significant extradural defect.

In a report dated June 26, 2002, Dr. Michael E. Alsop, a chiropractor, provided appellant's history and complaints, and diagnosed lumbar disc protrusion at L5-S1, posterior subluxations of L4 and L5, and bilateral sciatic neuritis. Dr. Alsop noted appellant's range of motion deficits, his positive Lasegue's sign for sciatica, positive Braggard's test for sciatica, positive Goldthwaite's test for lumbar neuritis, and positive bilateral straight leg raising test for disc involvement. He also found weakness in the quadriceps. Dr. Alsop reviewed appellant's x-rays and an MRI scan revealed a posterior disc protrusion at L5-S1 and posterior subluxations of L5 on S1 and L4 on L5. He opined that the changes discussed above were directly related to the injury sustained on April 29, 2001.

By decision dated August 14, 2002, the Office rejected appellant's claim finding that the initial evidence of record was insufficient to establish a causal relationship between factors of his

employment and his present condition. The Office found that the evidence lacked a rationalized medical opinion explaining how his condition resulted from employment factors.

On September 16, 2002 the Office received a report dated May 2, 2001 from Dr. Wes D. Wylie, a Board-certified family practitioner, which noted appellant's complaints of acute onset lower back pain after lifting a mail container, and indicated that physical examination demonstrated paralumbar spasm with point tenderness around the sacroiliac region, questionable spondylosis at L4-5 and a mild L5-S1 posterior subluxation, and he diagnosed acute lumbar strain. On May 14, 2001 Dr. Wylie noted that appellant had subjectively improved.

In an undated letter received by the Office on September 16, 2002, appellant described his duties, noted the implicated events in May 2001, which consisted of picking up a tub of flats when he felt a pop in his lower back, and explained that later he was pulling weeds from his yard when he knelt down to attach his hose and experienced a twang from his head to his heels. Appellant claimed that it was June 5, 2001 when he was referred to Work Med as he claimed his condition was due to repetitive motion. He claimed that the physician there made a diagnosis without seeing the x-rays. Appellant desired to continue treatment with his chiropractor.

On October 22, 2002 appellant requested reconsideration of the August 14, 2002 decision.

In a decision dated December 16, 2002, the Office denied modification of the August 14, 2002 decision. The Office noted that the necessary information from Dr. Nelson had not been received, that appellant had not provided the specific date of his alleged back injury when he picked up a tub of flats, and that he was unclear about when his back incident occurred while working at home picking up a hose. The Office noted that appellant claimed that his condition was work related due to repetitive lifting and carrying mailbags. The Office found that the record was inconclusive as to whether or not appellant's work requirements were the precipitating event in aggravating an underlying back problem, or whether it was his off-duty activities that precipitated the onset of his back pain and subsequent inability to perform his regular duties. It found that the factual and medical evidence was insufficient to establish a causal relationship between the diagnosed conditions and appellant's employment activities.

In a letter dated October 22, 2003, appellant claimed that the reason he did not file a claim on April 26, 2001 was that he was not clearly informed of what he needed to file, that the pop in his back occurred as alleged, but that it became worse on May 29, 2001. He also noted that it was his treating physician, Dr. Wylie, who reported the "pop" on April 26, 2001, and that Dr. Alsop was only his chiropractor.

On October 28, 2003 the Office received an August 26, 2003 letter from Dr. Wylie which stated that appellant was seen for a lower back injury that occurred at work on April 26, 2001. He noted that apparently there was confusion between appellant's upper thoracic back problems that had been long-standing and the development of the acute onset lower back pain related to lifting a large mail container weighing 65 pounds. Dr. Wylie stated that, "unequivocally, the relationship between the lifting and the injury are temporarily related and are certainly causal in factor. There is no doubt in my mind that this action was the provoking factor for his lower lumbar back pain. This needs to be differentiated from his upper thoracic back pain for which he

has received chiropractic care in the past.” Dr. Wylie summarized his opinion stating that appellant’s “lower back pain that he is currently suffering from and is disabled with is directly related to an injury sustained on April 26, 2001.”

By decision dated July 14, 2004, the Office determined that appellant sustained a traumatic injury on April 25, 2001 and changed appellant’s claim from that of an occupational disease to a traumatic injury claim. It accepted the claim for acute lumbar strain. However, it found that there was no rationalized medical evidence establishing that his condition on April 12, 2002, diagnosed as a bulging disc at L5-S1, was due to the traumatic injury of April 25, 2001 or to the job duties that he performed as a letter carrier for the employing establishment. The Office also stated that appellant’s accepted condition of an acute lumbar strain was considered to be a temporary condition, normally resolving within six to eight weeks, and that, since the traumatic injury was over three years old, his ongoing medical care could not be considered for payment without bridging factual and medical evidence. The Office noted that appellant was diagnosed with a bulging disc at L5-S1 over a year after the traumatic injury event, and that the medical evidence of record did not explain how this condition was either related to the traumatic injury of April 25, 2001 or to work factors over time.

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence. 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 an employee’s diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.¹

ANALYSIS

The Board notes that appellant established that he sustained an employment injury on April 25, 2001, but failed to provide sufficient rationalized medical evidence to show that his left posterolateral bulge of the L5-S1 disc, diagnosed a year later, is causally related to the April 25, 2001 injury. Although appellant filed a claim for an occupational disease, the Office accepted that he sustained a traumatic injury on April 25, 2001, resulting in an acute lumbar muscular strain after lifting mail tubs off the floor. However, no contemporaneous evidence was presented to establish that his diagnosed L5-S1 disc was caused or contributed to by that injury.

Appellant initially sought treatment with a chiropractor, but the record contains no contemporaneous evidence that the chiropractor took any x-rays or performed any other diagnostic radiological intervention at the time of initial treatment, which would have identified a bulging disc at L5-S1. Appellant claimed that when he sought treatment at Work Med, the

¹ *Donna L. Mims*, 53 ECAB 730 (2002).

physician, Dr. Nelson, took x-rays but did not read them before returning appellant to regular duty. These x-rays were never submitted to the record to demonstrate a bulging disc at that time.

In addition to lumbar strain Dr. Wylie diagnosed questionable spondylosis at L4-5 and a mild L5-S1 posterior subluxation, but no evidence was provided that any diagnostic radiological procedure was contemporaneously performed that would have revealed the alleged left posterolateral disc bulge at L5-S1. No further diagnostic imaging was performed on appellant for approximately one year.

It was not until May 15, 2002 that Dr. Wylie ordered an MRI scan taken of appellant's lumbar spine, which revealed the left posterolateral bulge of the L5-S1 disc. However, he provided no opinion as to any causal relationship with the April 25, 2001 employment injury.

On June 26, 2002 Dr. Alsop, a chiropractor, reviewed the x-ray and MRI scan films and noted the diagnosis of lumbar disc protrusion at L5-S1 and subluxations of L4 on L5. He also noted other test results for weakness, sciatica and neuritis, but he did not provide any analysis of how the event on April 25, 2001 caused any of these positive findings a year later. Dr. Alsop merely provided a conclusory statement contending that the changes found were directly related to the "April 29, 2001 injury." In this case, however, no injury of April 29, 2001 was determined to have occurred. The Office accepted that appellant sustained the traumatic employment incident on April 25, 2001, and that April 29, 2001 was the date appellant was doing yard work. Therefore, Dr. Alsop related appellant's positive clinical findings and radiologic diagnostics to working in his yard lifting a lawnmower into a truck and hooking up a hose. This does not support a work relationship. Dr. Alsop related appellant's positive findings, including the bulging disc, to working in his yard, and provided no explanation to the causal mechanism involved between any employment factor and appellant's current clinical findings. Therefore, his opinion is of diminished probative value, and is insufficient to establish appellant's claim.

No other medical evidence addressing the causal relationship of appellant's 2002 bulging disc to his April 25, 2001 injury was provided until Dr. Wylie's August 26, 2003 letter in which he stated that he saw appellant for an April 26, 2001 lifting incident, noted that appellant had experienced acute onset lower back pain after lifting a 65-pound mail container, and stated that "unequivocally the relationship between the lifting and the injury are temporarily [sic] related and are certainly causal in factor." Dr. Wylie stated that there was no doubt in his mind that "this action was the provoking factor for [appellant's] lower lumbar back pain." He concluded that appellant's current lower back pain was directly related to the April 25, 2001 employment injury, but he failed to fully explain the basis for his stated conclusion. No temporal relationship of appellant's radiographic evidence of the disc bulge and the April 25, 2001 lifting incident was evident as the disc bulge was not diagnosed for one year after the lifting incident. No contemporaneous x-rays demonstrating the disc bulge were submitted to the record. Further, Dr. Wylie's opinion on causal relationship did not discuss the mechanical or pathophysiological process involved, as to why the disc bulge was not diagnosed earlier, and why the effects only became evident more than one year after the employment injury. Dr. Wylie did not provide a rationalized medical opinion as to how or why appellant's bulging disc was causally related to the April 25, 2001 lifting incident, and therefore his opinion is also insufficient to establish appellant's claim.

As appellant has failed to submit to the record any evidence demonstrating that the bulging disc was present contemporaneously with the implicated lifting incident, and as none of the medical evidence of record contains any rationalized medical opinion evidence that explains the relationship between the lifting incident and the diagnosis one year later of a bulging left posterolateral disc at L5-S1, appellant has not met his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a left posterolateral bulging L5-S1 disc, causally related to an April 25, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2004 is hereby affirmed.

Issued: June 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member