

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

JOEL A. JOHNSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 05-244
Issued: March 25, 2005**

Appearances:
Joel A. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 1, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 11, 2004 which denied his request for modification of an Office decision dated August 8, 2003 finding that he had not established an injury in the performance of duty. 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 met his burden of proof in establishing that he sustained an occupational disease causally related to factors of his federal employment.

FACTUAL HISTORY

On June 1, 2003 appellant then a 48-year-old window clerk, filed an occupational disease claim, alleging that he sustained an injury while in the performance of duty. Appellant alleged that he unloaded two trucks daily, pulling bulk mail containers and all purpose containers off a lift, guiding them through two sets of dock doors and onto the mail room floor. He also pulled

pallets of mail stacks that were 3 to 5 feet high and weighed 2,000 pounds or more. Appellant was initially aware of his condition on September 1, 2002 and that it was caused by his employment on May 6, 2003. He first reported his condition to his supervisor on May 7, 2003 and stopped work the next day. The employing establishment noted that appellant related a back condition with a date of onset nine months earlier, but that he had also related to his supervisor on May 6, 2003 that his "leg was hurting." The employing establishment stated that it had no prior notice of any condition until May 6, 2003 when he advised that he had a leg injury.

Appellant submitted a magnetic resonance imaging (MRI) scan dated May 20, 2003 which revealed a degenerative disc disease involving L4-5. A small left paracentral extruded herniation was observed. On May 6, 2003 a supervisor indicated that appellant advised another supervisor that on that day his leg was hurting and that he was seeing a doctor. On June 1, 2003 appellant stated that his back was the problem and that it was going on for nine months. The supervisor noted that none of the supervisors were aware of any medical condition or back problems associated with appellant.

In a letter dated June 25, 2003, the Office requested additional information from appellant including a description of how the claimed condition developed, including the symptoms experienced, when he first noticed the condition, all previous similar conditions sustained and whether or not the claimed condition was intermittent or continuous. The Office further requested a comprehensive medical report from his treating physician which described his symptoms, results of examinations and tests, diagnosis, the treatment provided and the physician's opinion with medical reasons on the cause of the condition.

Appellant thereupon submitted results of a May 19, 2003 electromyogram (EMG) evaluation finding left L5-S1 radiculopathy, and a May 14, 2003 MRI scan which revealed mild disc space narrowing at L4-5, with associated hypertrophic changes. On May 14, 2003 Dr. James E. Beale, Jr., appellant's attending orthopedic surgeon, noted no tenderness in his lumbar spine or hip with a range of motion of 70 percent of normal; strength was 90 percent of normal. Appellant had no pain with hip rotation. Dr. Beale diagnosed lumbar sprain and tendinitis of the right hip. On May 28, 2003 Dr. Beale referred him to Dr. Khan for management of his ruptured disc. In a narrative dated July 23, 2003, appellant related his history of his injury, noting it began in the hips and gradually included his buttocks, legs and back.

On July 14, 2003 Dr. Beale stated that appellant had a left lumbar disc, that an EMG was positive for L5-S1, neuropathy on the left, and that he was scheduled for an epidural injection on the July 25, 2003.

By decision dated August 8, 2003, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant's condition was caused by factors of his federal employment.

On July 13, 2004 appellant filed a request for reconsideration and submitted evidence in support of the request. He also submitted multiple pages of medical literature regarding herniated discs and sciatica. In a report dated July 14, 2003, Dr. Beale stated that appellant was unable to work from May 14 to September 30, 2003. In a report dated May 6, 2003,

Dr. Ralph A. Gaudio stated that appellant had an acute lumbar condition and a possible herniated disc. On January 5, 2004 Dr. Beale stated that appellant may return to light-duty work on January 19, 2004. In a report of that same day, Dr. Beale stated that appellant was off work from May 14, 2003 to January 1, 2004. In a report dated July 13, 2004, Dr. Gaudio stated that appellant was seen on May 6, 2003 and was referred to Dr. Beale for a possible herniated disc.

By decision dated August 11, 2004, the Office denied modification of appellant's request for reconsideration on the grounds that the evidence failed to establish a causal relationship between his condition and his employment.

LEGAL PRECEDENT

To establish that an occupational injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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, generally is 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 appellant'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 appellant.¹

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

ANALYSIS

It is not disputed that appellant's job required him to unload trucks daily. He alleged that this caused or aggravated hip, buttock and low back pain that worsened over time. The medical evidence indicates that appellant has low back and hip problems.

However, none of the medical evidence establishes a causal relationship between the diagnosed condition and appellant's employment. Although appellant discussed his employment factors in detail, none of the medical evidence related his employment with the diagnosed condition. Dr. Gaudio noted a herniated disc on May 6, 2003, but made no opinion on causal

¹ *Victor Woodhams*, 41 ECAB 345, 352 (1989).

² *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

relationship between the condition and his employment. Dr. Beale's May 14, 2003 report noted no pain along the spine or hip, and reported almost normal range of motion with no pain. Although the record includes a prescribed epidural injection in a July 13, 2003 report from Dr. Beale, he did not relate any objective findings to support the need for the injection. Further, Dr. Beale's reports placing appellant on total disability from May 13, 2003 to January 1, 2004 are not fortified by a rationalized medical opinion establishing a disability related to his employment.

Although diagnostic tests such as the May 14, 2003 MRI scan and a May 19, 2003 EMG support a disc condition at L5-S1 and pain along the lower spine, none of the medical reports established that appellant's employment caused this condition.

Furthermore, medical literature submitted by appellant is also insufficient to establish his claim. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.³

CONCLUSION

The Board finds that appellant failed to establish that he sustained an occupational disease causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 11, 2004 is affirmed.

Issued: March 25, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *William C. Bush*, 40 ECAB 1064, 1075 (1989).