

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

CURTIS HINTON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Poplar Bluff, MO, Employer**

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**Docket No. 06-285
Issued: April 5, 2006**

Appearances:
Curtis Hinton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 17, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated October 18, 2005, which denied modification of the denial of his claim that his back condition was employment related. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that his lower back condition was causally related to employment factors.

FACTUAL HISTORY

This is appellant's third appeal before the Board. On October 20, 2003 the Board affirmed an April 17, 2002¹ decision of the Office, which found that appellant failed to establish

¹ On October 23, 2002 appellant, then a 49-year-old distribution clerk, filed an occupational disease claim alleging his lower back condition was employment related. The Office denied appellant's claim on the grounds that he failed to establish fact of injury as the factual and medical evidence was insufficient to support his claim.

that he sustained an injury in the performance of duty.² On appeal for the second time, the Board issued an order dated March 10, 2005 setting aside a September 9, 2004 Office decision and remanding for further development as to whether appellant's condition was employment related.³ The facts and the circumstances of the case are set forth in the prior decisions and hereby incorporated by reference.

On May 5, 2005 the Office received medical and factual information. This included disability reports dated October 23 and November 6, 2002, February 10, March 24, April 10, June 10, June 29, July 20 and October 17, 2003 and December 17, 2004, an undated medical report, reports dated April 24 and 30 and December 18, 2003 and treatment notes dated January 13, 2004 from Dr. Davis, a November 25, 2002 discharge summary, a report dated November 14, 2002 and office notes dated January 7, February 18 and June 10, 2003. Additional evidence consists of an undated office note by Dr. Yingling and an October 22, 2002 magnetic resonance imaging (MRI) scan of the lumbar spine.

Dr. Yingling indicated that appellant underwent a decompressive laminectomy at L4-5 and L5-S1 with a posterior lumbar interbody fusion on November 22, 2002. He noted that the MRI scan revealed "constriction of the thecal sac in the AP [anterior/posterior] dimension beginning roughly at L4 and extending through the sacrum," degenerative disc disease, a bulging disc at L4-5 and "[t]here was an abundant amount of epidural fat at this level consistent with epidural lipomatosis."

In an undated clinical report, Dr. Davis noted appellant's employment history and duties and Dr. Yingling's diagnosis. He concluded that appellant was totally disabled and opined his back condition was directly due to appellant's employment duties which included lifting, rotation of the spine and bending.

In reports dated January 7 and February 18, 2003, Dr. Yingling reported that appellant was doing well after his lumbar decompression and interbody fusion and continuing to improve. Dr. Yingling noted that appellant continued "to make progress" in a June 10, 2003 report.

In an April 30, 2003 report, Dr. Davis diagnosed severe epidural lipomatosis of the lumbar spine and compression of the dural sac. He did not expect, with a reasonable degree of medical certainty, that appellant would have a complete and full recovery. Dr. Davis opined that appellant was totally disabled and concluded that his condition had been exacerbated by his work.

² Docket No. 03-1606 (issued October 20, 2003).

³ In a report dated August 29, 2004, Dr. Daniel D. Zimmerman, an Office medical adviser, stated the medical evidence of record was insufficient to determine causation. In support of this conclusion, Dr. Zimmerman indicated "all records from" Drs. D.L. Davis, a Board-certified family practitioner, and David G. Yingling, an examining Board-certified neurological surgeon, were required to make a determination. (Emphasis in the original.) With regards to appellant's epidural lipomatosis, the Office medical adviser opined that it "could not have been caused, aggravated, accelerated, or precipitated by this claimant's reported sitting with his feet on a rest bar when sorting the mail" or his other work activities of bending, rotation of the spine and lifting.

In a report dated August 12, 2005, an Office medical adviser reviewed the record and noted the operative report had not been supplied. He opined that the Office could not accept that the lumbar surgery necessitated a consequence of appellant's work-related duties. The Office medical adviser opined that the diagnosis of epidermal lipomatosis was unrelated to appellant's job duties.

On September 2, 2002 the Office received a November 22, 2002 operative report and reports dating from November 2002 to May 20, 2003 by Dr. Yingling. The postoperative diagnosis was lumbar epidural lipomatosis and bilateral L5 spondylolysis. The procedure performed was an L4-5 decompressive laminectomy and lumbar interbody fusion at L5-S1. In a March 20, 2003 report, Dr. Yingling stated that appellant was doing well following surgery and reported no real tenderness to palpation. He reported that appellant had "mild tenderness to palpation" in the lumbar area and showed gradual improvement in his April 17, 2003 report. On May 20, 2003 Dr. Yingling noted that appellant continued "to improve after his decompression and posterior lumbar body fusion." He indicated that appellant was capable of light-duty work at this point.

In a report dated October 16, 2005, the Office medical adviser reviewed the reports from Drs. Davis and Yingling, including the November 22, 2002 operative report. The Office medical adviser found that appellant's epidermal fat was unrelated to his federal employment. He stated that "[t]his large amount of epidural fat was not caused, aggravated, accelerated or precipitated by" appellant's employment duties. The Office medical adviser concluded that appellant's epidermal fat, not anything else, was causing the symptoms consistent with spinal stenosis which led appellant to seek medical treatment.

By decision dated October 18, 2005, the Office denied modification of the prior decisions denying the claim. The Office found that appellant had not established that his back condition was causally related to his federal employment.

LEGAL PRECEDENT

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;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ 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.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Marlon Vera*, 54 ECAB 834 (2003); *Janet L. Terry*, 53 ECAB 570 (2002); *Roger Williams*, 52 ECAB (2001).

⁶ *Ernest St. Pierre*, 51 ECAB 623 (2000).

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical opinion evidence from a physician which relates his back condition and need for surgery to factors of his federal employment as a distribution clerk. There is no rationalized, probative report, which relates his claimed lumbar epidural lipomatosis 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 disability reports dated October 23 and November 6, 2002, February 10, March 24, April 10, June 10, June 29, July 20 and October 17, 2003 and December 17, 2004, an undated medical report, reports dated April 24 and 30 and December 18, 2003 and treatment notes dated January 13, 2004 by Dr. Davis, who noted appellant's employment history and duties and concluded that appellant was totally disabled due to an employment-related back condition. Dr. Davis diagnosed severe epidural lumbar lipomatosis and compression of the dural sac in an April 30, 2003 report, which he concluded had been exacerbated by appellant's work. However, Dr. Davis did not describe the etiology of appellant's condition in any detail or describe how his work duties as a distribution clerk would have been competent to cause or contributed to the claimed severe epidural lumbar lipomatosis and compression of the dural sac.¹² Moreover, his opinion is of limited probative value for the reason that it is generalized in nature and equivocal in that he only summarily stated that

⁷ *Luis M. Villanueva*, 54 ECAB 666 (2003).

⁸ *Conard Hightower*, 54 ECAB 796 (2003).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *Frankie A. Farinacci*, 56 ECAB ____ (Docket No. 05-1282, issued September 2, 2005) (in order to be considered rationalized, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors).

appellant's condition was causally related to factors of his employment.¹³ Accordingly, these reports did not constitute sufficient medical evidence to establish that appellant's claimed lower back condition was caused or aggravated by his employment.

Appellant submitted a November 25, 2002 discharge summary, a report dated November 14, 2002 and office notes dated January 7, February 18 and June 10, 2003 and an undated office note by Dr. Yingling. In the November 25, 2002 discharge summary, the physician stated that an MRI scan revealed "constriction of the thecal sac," degenerative disc disease, a bulging disc at L4-5 and "an abundant amount of epidural fat," consistent with epidural lipomatosis. Dr. Yingling diagnosed postoperative lumbar epidural lipomatosis and bilateral L5 spondylolysis in a November 22, 2002 operative report. Subsequent reports from Dr. Yingling merely noted appellant's improvement following surgery. The reports of Dr. Yingling are deficient as the physician did not provide a probative, rationalized medical opinion that the claimed condition was causally related to employment factors. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a 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.¹⁴ The reports from Dr. Yingling do not sufficiently describe appellant's job duties or explain the medical process through which such duties would be competent to cause or contribute to the claimed condition. These reports, therefore, are of limited probative value as they do not contain adequate medical rationale explaining how or why appellant's epidural lumbar lipomatosis was affected by or related to factors of employment.¹⁵ The reports of Drs. Davis and Yingling, the only evidence appellant submitted in support of his claim, do not constitute sufficient medical evidence to establish that appellant's claimed lumbar epidural lipomatosis was causally related to his employment. An Office medical adviser reviewed the evidence and noted the deficiencies in the reports. Appellant claims that surgical intervention was warranted based on his implicated employment factors. He has not established that the epidural fat was causally related to his employment duties. The Office medical adviser noted the epidural fat was the cause of appellant's problems, consistent with spinal stenosis, thereby necessitating medical treatment.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

¹³ *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005) (a medical opinion not fortified by rationale is of diminished probative value).

¹⁴ *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁵ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁶ *Paul E. Thams*, 56 ECAB ____ (Docket No. 04-1019, issued April 26, 2005).

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 lumbar condition was causally related to his employment.

CONCLUSION

The Board finds that appellant has not established that his lower back condition was causally related to employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2005 is affirmed.

Issued: April 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board