

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

MURIEL PARKS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-72
Issued: June 16, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2005 appellant, through her attorney, filed a timely appeal from an October 25, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs denying her claim for an occupational disease. 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 that she sustained a back condition causally related to factors of her federal employment.

FACTUAL HISTORY

On June 22, 2003 appellant, then a 47-year-old mailhandler, filed an occupational disease claim alleging that she sustained back pain radiating down her right leg due to factors of her federal employment.¹ She stopped work on April 4, 2003.

¹ On the claim form, appellant indicated that she initially filed the claim as a recurrence of disability due to an April 14, 2000 employment injury.

In a report dated June 10, 2003, Dr. Lee N. Hanuschak, an internist, related that he initially treated appellant on February 27, 2003 for pain in her back and right lower extremity. He noted her history of back surgery in May 2001 and indicated that a computerized tomography scan revealed narrowing at L4-5 and a small osteophyte. Dr. Hanuschak related that her job could “only be expected to exacerbate her back pains....”

In a statement received by the Office on November 18, 2003, appellant described prior employment injuries in 1994, 1998 and April 2000. She underwent a laminectomy and interbody fusion on May 29, 2001 due to an April 2000 employment injury. Appellant subsequently worked part time with limitations until October 2002, when she resumed full duty. Appellant related that, in February 2003, she experienced back problems while loading a conveyor belt.

In a report dated November 7, 2003, Dr. Hanuschak related:

“[Appellant] has a long history of severe back pain since 1994, when she was lifting sacks onto a conveyor at work. After a subsequent severe episode in 2000, she underwent orthopedic surgery in 2001, resulting in fusion of two vertebral bodies and metal screw implantation.”

He stated: “I believe that [the] demands of her job caused [the] disc herniation at L5-S1 that resulted in her surgery and that postsurgical changes continue to cause her pain and disability.”

By decision dated December 17, 2003, the Office denied appellant’s claim on the grounds that she did not establish a medical condition arising from the identified employment factors. The Office accepted that she handled mail during the course of her employment.

On December 29, 2003 appellant requested an oral hearing. At the hearing, held on July 27, 2004, she described her prior employment injuries. Appellant sustained a herniated disc due to an April 14, 2000 injury and underwent surgery, following which she resumed part-time employment. In October 2002, she resumed regular full-time work unloading bulk mail sacks and again experienced back problems in February 2003. Appellant worked light duty until April 3, 2003, when she stopped work and did not return.²

In a report dated May 21, 2004, Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon, discussed appellant’s history of employment-related back problems since 1994. He noted that she underwent surgery on May 29, 2001 and that she “has had some continued discomfort in the low back. She returned on disability and has not returned to work.” Dr. Draper diagnosed low back pain syndrome with a herniated lumbar disc at L5-S1, preexisting lumbar degenerative disc disease at L5-S1 and “[s]tatus post bilateral laminectomy, discectomy and facetectomy L5-S1, posterior lumbar fusion L5-S1 with pedicle screws, instrumentation, bone graft and allograft bone dowels.” He related that appellant’s injuries caused a permanent aggravation of preexisting degenerative disc disease of the lumbar spine. Dr. Draper opined that appellant could work 8 hours per day with restrictions on lifting over 20 pounds.

² Appellant indicated that her request for disability retirement was approved.

In a report dated June 1, 2004, Dr. Deborah Franklin, a Board-certified physiatrist, reviewed appellant's history of a lumbar fusion in May 2001 and noted that she stopped work on April 2003. She diagnosed failed back syndrome with numbness of the left lateral thigh. Dr. Franklin recommended an electromyogram (EMG) and pain medication.

By decision dated October 25, 2004, the hearing representative affirmed the December 17, 2003 decision. He noted that it seemed appropriate for appellant "to file any claim for lost wages in the case for her 2000 traumatic injury."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing 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.⁸

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.⁹ The opinion of the physician must be based on a complete factual and medical background of the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 EAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

Appellant attributed her back condition to lifting at work after resuming her regular employment duties in October 2002, following a work-related back injury. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated June 10, 2003, Dr. Hanuschak noted that he treated appellant on February 27, 2003 for pain in her back and right lower extremity. He related that her job would “exacerbate her back pains.” Dr. Hanuschak, however, did not specifically attribute appellant’s back pain to her employment duties and thus his opinion is of diminished probative value. Further, his finding that her work duties would aggravate her back pain refers to a possibility of future injury. The Board has held that the possibility of a future injury does not constitute an injury or form the basis for the payment of compensation under the Act.¹³

In a report dated November 7, 2003, Dr. Hanuschak discussed appellant’s history of back pain beginning in 1994 and back surgery in 2001. He attributed her L5-S1 disc herniation to her employment and opined that the surgery for the disc herniation caused her continuing pain and disability. As Dr. Hanuschak did not attribute appellant’s back condition to lifting at work after her return to her usual employment in October 2002, his opinion is insufficient to meet her burden of proof.¹⁴

In a report dated May 21, 2004, Dr. Draper discussed appellant’s history of employment-related back problems since 1994. He noted that she underwent surgery on May 29, 2001 but subsequently continued to experience pain in her lower back and stopped work. Dr. Draper diagnosed low back pain syndrome with a herniated lumbar disc at L5-S1, preexisting lumbar degenerative disc disease at L5-S1 and status post discectomy and fusion at L5-S1. He found that appellant sustained a permanent aggravation of preexisting degenerative disc disease of the lumbar spine due to her injuries. Dr. Draper opined that appellant could work 8 hours per day with restrictions on lifting over 20 pounds. He did not, however, discuss the employment factors identified by appellant as causing her employment injury, that of lifting and loading at work after October 2002. As Dr. Draper’s report does not contain the history of appellant resuming her

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ *Andy J. Paloukos*, 54 ECAB 712 (2003).

¹⁴ As part of her burden of proof, appellant must submit medical evidence establishing that the diagnosed condition is causally related to the employment factors identified as causing her condition. *Robert A. Boyle*, 54 ECAB 381 (2003).

regular work duties on October 2002 and experiencing back pain in February 2003, his opinion is based on an incomplete history and thus of little probative value.¹⁵

Dr. Franklin, in a report dated June 1, 2004, diagnosed failed back syndrome with numbness of the left lateral thigh and recommended an EMG and pain medication. She did not, however, address the cause of appellant's failed back syndrome. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁶

On appeal, appellant's attorney contends that she has submitted sufficient evidence to establish her claim.¹⁷ As previously discussed, however, appellant has failed to submit rationalized medical evidence establishing that she sustained an occupational disease causally related to factors of her federal employment; consequently, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not established that she sustained a back condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2004 is affirmed.

Issued: June 16, 2006
Washington, DC

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

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

¹⁵ *John W. Montoya*, *supra* note 11.

¹⁶ *Donald T. Pippin*, 54 ECAB 631 (2003).

¹⁷ Appellant's attorney refers to a report dated July 1, 2001 from Dr. Suzette T. Avetian, an osteopath; however, this report is not contained in the case record.