

In a May 15, 2006 statement, appellant indicated that he sorted mail for two or three hours per day and then delivered mail for four to six hours. He had to sort letters, flats and parcels into trays and tubs and place them into a hamper before he started his route. The trays weighed 15 to 20 pounds, the tubs weighed 20 to 40 pounds and the parcels weighed up to 70 pounds. Appellant submitted an April 15, 2006 form report in which Dr. Clio Robertson, an attending Board-certified orthopedic surgeon, diagnosed lumbar spondylosis and recommended work restrictions.

In a June 16, 2006 decision, the Office denied appellant's occupational disease claim. It accepted that he established employment factors in the form of lifting, twisting, bending, stooping, standing and walking while casing and delivering mail. It found, however, that he did not submit sufficient medical evidence to establish that he sustained a medical condition due to these employment activities.

In an April 14, 2006 report, Dr. Robertson noted that appellant reported experiencing increasing low back pain over the last two years which was aggravated by the walking, bending, stooping and twisting he performed in his letter carrier job. He stated that appellant had increased symptoms in the prior two months when he worked overtime. Dr. Robertson recommended that a magnetic resonance imaging (MRI) scan be obtained. The findings of an April 17, 2006 MRI scan showed degenerative changes at L2-3 through L5-S1 and annular disc bulges at all levels with the L5-S1 bulge effacing the thecal sac.

In a June 28, 2006 report, Dr. Robertson stated that appellant continued to complain of low back pain with aggravation upon bending or stooping. He noted that the MRI scan findings showed degenerative disc disease as well as left paracentral disc protrusion. Dr. Robertson recommended various work restrictions and stated:

“[Appellant] has asked me to address the causation of his complaints. In this regard he does have preexisting degenerative arthritis of his lumbar spine which I believe has become increasingly symptomatic as a result of the cumulative effect of bending, stooping, twisting and lifting in his 13[-]year employment for the [employing establishment].”¹

Appellant requested a review of the written record by an Office hearing representative. In a November 17, 2006 decision, the Office hearing representative set aside the June 16, 2006 decision and remanded the case for further development of the medical evidence. The hearing representative found that the June 28, 2006 opinion of Dr. Robertson, while not fully rationalized, supported an uncontroverted inference between the accepted employment factors and appellant's claimed condition and therefore he should be referred to a second opinion physician for further evaluation.

On remand, the Office referred appellant and the case record to Dr. William D. Smith, a Board-certified orthopedic surgeon, for examination and an opinion regarding whether

¹ In a June 5, 2006 form report, Dr. Robertson diagnosed lumbar spondylosis and checked a “yes” box in response to a question regarding whether appellant's condition was employment related. In May 15 and June 28, 2006 form reports, he also indicated that appellant's condition was employment related.

appellant's claimed back condition was related to his employment duties. Dr. Smith was provided with a statement of accepted facts which detailed appellant's medical history and work duties. On January 1, 2007 he stated that appellant reported that he injured his back during the course of his employment with the employing establishment on or about April 14, 2006 and that since that time he experienced severe nonradicular low back pain which tended to worsen with activity as the workday proceeded. Dr. Smith indicated that, on examination, appellant exhibited tenderness in the lumbar region and noted that an MRI scan showed multilevel degenerative disc disease. He stated:

“In my opinion, [appellant] has chronic lumbar pain secondary to degenerative lumbar disc disease. It is my professional opinion that the painful low back condition is secondary to the work-related injury of April 14, 2006 which served as an aggravation of a preexisting degenerative disc problem.”²

In a February 14, 2007 decision, the Office denied appellant's occupational disease claim. It quoted the portion of Dr. Smith's January 1, 2007 report which indicated that “the painful low back condition is secondary to the work-related injury of April 14, 2006” and stated, “Therefore, your claim for compensation is denied as the medical evidence does not demonstrate that the claimed medical condition is related to the established work-related event....”³

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim.⁵ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought, whether a traumatic injury or occupational disease, is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁸

² In a January 1, 2007 form report, Dr. Smith recommended work restrictions.

³ Appellant submitted additional evidence after the Office's February 14, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁶ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *Russell F. Polhemus*, 32 ECAB 1066 (1981).

⁸ *See Robert F. Hart*, 36 ECAB 186 (1984).

ANALYSIS

Appellant claimed that he sustained a low back injury due to the repetitive duties of his letter carrier job. The Office accepted that he established employment factors in the form of lifting, twisting, bending, stooping, standing and walking while casing and delivering mail, but found that appellant did not submit sufficient medical evidence to establish that he sustained a medical condition due to these employment factors. In a November 17, 2006 decision, an Office hearing representative remanded the case to the Office for further development of the medical evidence after finding that the June 28, 2006 opinion of Dr. Robertson, an attending Board-certified orthopedic surgeon, supported uncontroverted inference between employment factors and appellant's claimed condition. The Office then found that the product of the referral, a January 1, 2007 report of Dr. Smith, a Board-certified orthopedic surgeon, was not sufficient to establish appellant's claim.

In a January 1, 2007 report, Dr. Smith stated that appellant had chronic lumbar pain secondary to degenerative lumbar disc disease and noted that "the painful low back condition is secondary to the work-related injury of April 14, 2006 which served as an aggravation of a preexisting degenerative disc problem." As noted above, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁹ The Board finds that the opinion of Dr. Smith is in need of additional clarification.

Dr. Smith provided an opinion that appellant sustained an employment-related condition, albeit one that occurred on April 14, 2006 but did not provide an explanation for this determination other than to state that he felt he had aggravated a preexisting condition. He explain how specific employment factors could have been competent to cause appellant's observed condition. Dr. Smith did not provide an opinion on whether appellant sustained injury due to engaging in the accepted work duties over an extended period of time, such as lifting, twisting, bending, stooping, standing and walking while casing and delivering mail.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a medical condition due to employment factors. The Office should ask Dr. Smith to clarify his opinion regarding the nature of any employment-related condition sustained by appellant. If Dr. Smith is unwilling or unable to clarify his opinion appellant should be referred to an appropriate specialist for further evaluation. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty. The case is remanded to the Office for further development.

⁹ See *supra* note 8 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 14, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 4, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board