



In a July 28, 2005 return to work form, Dr. Evander Duck, Jr., a treating physician, diagnosed lumbar disc herniation and released appellant to work on July 28, 2005.

On September 12, 2005 Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, diagnosed lumbar radiculopathy which had been exacerbated by a traumatic injury. He reported that appellant had sustained a work injury in January 2004 when a dog jumped on him while he was delivering mail which caused him to fall onto his back. Prior to this injury appellant “had low back pain with radiation down the left leg,” which worsened within two months of the injury. An examination revealed left leg weakness and that prolonged standing, sitting or walking exacerbated the pain.

On September 28, 2005 the Office advised appellant that the medical evidence submitted was insufficient to support his claim. He was asked to provide a comprehensive medical report from his attending physician addressing the causal relationship of any diagnosed condition.

In response to the Office’s request, appellant submitted a June 22, 2005 report from Dr. Duck, reports dated September 12 and October 24, 2004 by Dr. Rosenblum, and reports dated April 14 and 22, 2005 by Dr. Steven Berkowitz, a treating Board-certified orthopedic surgeon. He also submitted diagnostic tests and an October 14, 2005 surgical report. Dr. Duck diagnosed narcotic dependency and intractable low back pain. Appellant related that his back pain has significantly impaired his quality of life and prevents him from performing daily functions. A physical examination revealed tenderness upon palpation of the L1-5 lumbar paraspinal muscles and decreased range of lumbar spinal motion. Dr. Berkowitz diagnosed L3-4 and L4-5 herniated discs with degenerative disc disease and left sacroiliac joint strain/sprain dysfunction.

In a statement, appellant related having low back pain for the prior 10 years, which was exacerbated on January 24, 2004 when he was attacked by a dog on his route. It was not until he had returned to his duties as a letter carrier “that it became apparent to me that my back condition had worsened.” Appellant requested light-duty work due to his back condition on April 25, 2005. The employment duties he alleged aggravated his condition include bending, lifting, climbing, walking, twisting and carrying a heavy bag. Appellant also attributed the aggravation of his back condition to the January 24, 2004 dog attack. He stated that he had been a mail carrier for 28½ years and, as a result, he developed low back pain, which increased over the years.

On October 24, 2005 Dr. Rosenblum reported that appellant had “some residual left-sided low back pain status post multiple level lumbar decompression.”

By decision dated January 25, 2006, the Office denied his claim on the grounds that the medical evidence was insufficient to establish that he sustained an injury due to the established employment factors.

In a January 30, 2006 letter, appellant’s counsel requested an oral hearing before an Office hearing representative, which was held on May 9, 2006.

In a February 27, 2006 report, Dr. Robert Dennis, an examining Board-certified orthopedic surgeon, reviewed the medical records and performed a physical examination. He

diagnosed chronic cervical strain/sprain, lumbar strain/sprain, L3-4 and L4-5 herniated discs, cervical and lumbar degenerative disc disease, and lumbar stenosis; all aggravated by the January 24, 2004 dog attack.

Subsequent to the hearing, appellant submitted a January 8, 2006 report from Dr. Rosenblum who opined that appellant's January 24, 2004 employment injury aggravated his preexisting lumbar/sacral spine syndrome.

By decision dated July 21, 2006, the Office hearing representative affirmed the denial of appellant's claim.

On June 18, 2007 appellant's counsel requested reconsideration and submitted a May 20, 2007 report from Dr. Martin Riss, an examining osteopath specializing in family practice. Dr. Riss reviewed the medical evidence, employment history and performed a physical examination. Appellant first injured his back in 1991 while lifting a parcel at work and again on January 24, 2004 when he was attacked by a dog. Dr. Riss stated that appellant's return to work as a carrier further aggravated his back condition as evidenced by his complaints of back pain in March 2004. Appellant stopped work in April 2005 due to his inability to perform his duties as a letter carrier. The physical examination revealed lumbar tenderness on palpation "spasm over the left lumbar paravertebral muscles" and normal deep tendon reflexes and sensation. Range of motion included 50 degrees flexion, 5 degrees extension, 50 degrees right rotation, 30 degrees left rotation, 50 degrees right rotation, 35 degrees left rotation and 10 degrees right and left-side bending. Dr. Riss diagnosed an aggravation of his preexisting lumbar condition, causing intractable severe back pain, left-side lumbosacral radiculopathy and status post L2-3, L3-4, and L4-5 hemilaminectomy, foraminotomy and medial facetectomy and L3-4 discectomy. As to the January 24, 2004 employment injury, he diagnosed lumbar radiculopathy, L3-4 and L4-5 herniated nucleus pulposus L2-3 and L5-S1 diffuse disc bulges, L2-3 foraminal and spinal stenosis, left sacroiliac joint strain/sprain dysfunction, T10-11 degenerative disc disease and thoracic sprain. Dr. Riss opined that appellant was totally disabled due to his back condition. He attributed appellant's low back surgery to the January 24, 2004 employment injury and his subsequent return to work performing his duties as a letter carrier.

By decision dated August 17, 2007, the Office denied modification of its January 21, 2006 decision. The Office determined that the medical evidence was insufficiently rationalized to establish that appellant's back condition was aggravated by his employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his 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.<sup>2</sup> These are the essential elements of each and every

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

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;<sup>4</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### ANALYSIS

Appellant submitted insufficient medical evidence to establish that his low back condition was caused or aggravated by factors of his federal employment. The medical evidence of record fails to provide any explanation of how his federal work duties caused or contributed to his diagnosed conditions. The Office informed appellant of the evidence needed to establish his claim in its letter of September 28, 2005.

On July 28, 2005 Dr. Duck diagnosed lumbar disc herniation. In a June 22, 2005 report, he diagnosed narcotic dependency and intractable low back pain. On April 14 and 22, 2005 Dr. Berkowitz diagnosed L3-4 and L4-5 herniated discs with degenerative disc disease and left sacroiliac joint strain/sprain dysfunction. However, neither Dr. Berkowitz nor Dr. Duck provided an opinion regarding the cause of these diagnosed conditions. Medical evidence which

---

<sup>3</sup> See *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>5</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>6</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>7</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup>

Appellant submitted hospital and diagnostic reports regarding a back condition; however, these reports do not contain a discussion on causal relationship. As noted, the requisite evidence needed to establish the claim was a medical report from a physician explaining how his federal employment contributed to his diagnosed conditions.<sup>12</sup>

Appellant also submitted reports dated September 12, 2005 to January 8, 2006 by Dr. Rosenblum, who diagnosed lumbar radiculopathy which he opined had been aggravated in January 2004 when appellant was attacked by a dog. On October 24, 2005 Dr. Rosenblum reported that appellant was doing well following his surgery. He diagnosed a preexisting lumbar-sacral spinal condition, which he opined had been aggravated by appellant's January 2004 employment-related injury. Dr. Rosenblum did not adequately explain the basis for concluding that appellant's condition was related to a history of bending, lifting, climbing, walking, twisting and carrying a heavy bag at work. Similarly, Dr. Dennis diagnosed chronic cervical strain/sprain, lumbar strain/sprain, L3-4 and L4-5 herniated discs, cervical and lumbar degenerative disc disease, and lumbar stenosis, but failed to provide medical reasoning or rationale to explain how appellant's condition was related to his activities or a letter carrier. While the reports by Drs. Dennis and Rosenblum might be germane to a claim for a traumatic injury occurring within one workday, they are of diminished probative value with regard to appellant's occupational disease claim. Neither Dr. Dennis nor Dr. Rosenblum addressed how the implicated employment factors caused or aggravated the diagnosed back conditions or contributed to the aggravation of appellant's back condition.<sup>13</sup> Appellant has not submitted sufficient rationalized medical evidence from Drs. Dennis and Rosenblum supporting that his diagnosed condition is causally related to his federal employment work activities.

Appellant also submitted a report by Dr. Riss who diagnosed an aggravation of preexisting lumbar left sided lumbosacral radiculopathy and status post L2-3, L3-4, and L4-5 hemilaminectomy, foraminotomy and medial facetectomy and L3-4 discectomy. Dr. Riss concluded that appellant's back condition had been aggravated by the dog bite and "was further aggravated after he returned to work as a letter carrier." He opined that appellant's return to work performing his duties as a letter carrier contributed to appellant's need for low back surgery. Dr. Riss provided no explanation other than a conclusory statement that appellant's back condition had been aggravated by his employment duties. He did not provide adequate medical rationale to explain how the various conditions he diagnosed had been caused or aggravated by his employment duties.<sup>14</sup> Without additional explanation or rationale, Dr. Riss' report is insufficient to establish causal relationship or show that appellant's condition had been

---

<sup>11</sup> *A.D.*, 58 ECAB \_\_\_ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> *J.Z.*, 58 ECAB \_\_\_ (Docket No. 07-531, issued May 11, 2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> See 20 C.F.R. §§ 10.5(q), (ee), for the Office's definition of an occupational disease and traumatic injury, respectively.

<sup>14</sup> See *A.D.*, *supra* note 11; *Leslie C. Moore*, *supra* note 7.

caused or aggravated by his employment duties. The Board finds that his report is insufficient to establish a causal relationship between appellant's diagnosed condition and employment factors, as Dr. Riss did not provide sufficient explanation or rationale to fortify his conclusions.

**CONCLUSION**

The Board finds that appellant has not established that his low back condition was causally related to the factors of employment he identified.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 17, 2006 is affirmed.

Issued: March 12, 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