

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

J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plain City, OH, Employer**

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**Docket No. 08-1537
Issued: January 29, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 5, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' April 8, 2008 decision affirming the denial of his claim. 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 in the performance of duty.

FACTUAL HISTORY

On February 22, 2007 appellant, then a 52-year-old city letter carrier, filed an occupational disease claim alleging that he sustained bulging discs in his lower back in the L4-5 region which he attributed to his work. He first became aware of his condition on December 24, 2006. Appellant stopped work on December 26, 2006 and returned to work on March 2, 2007.

Appellant submitted a CA-17 form, duty status report, from Dr. Theodore Jordan, an osteopath specializing in manipulative medicine. Dr. Jordan advised that appellant sustained a back injury from carrying mail. He reported that appellant had decreased reflexes in the right leg and a back spasm. Dr. Jordan also diagnosed a disc bulge with nerve root impingement.

In an undated CA-20 form, received on February 23, 2007, Dr. Jordan diagnosed a bulging disc at L4-5 with myelopathy. He opined that appellant's condition was caused or aggravated by his employment noting that the mechanism of carrying mail was consistent with the injury. Dr. Jordan provided physical therapy and traction and found that appellant could resume work on March 3, 2007.

In a March 6, 2007 letter, the Office notified appellant of the factual and medical evidence needed to establish his claim and provided 30 days to submit such evidence. It requested that appellant describe the work activities that caused or influenced his lower back and submit a physician's reasoned opinion regarding how his work duties caused or aggravated his diagnosed back condition.

Appellant submitted a narrative statement dated March 12, 2007. He noted that on December 22, 2006 his lower back felt a little tight after carrying mail on a mounted route. On December 23, 2006 appellant felt no pain after carrying mail on a walking route. He did not work on December 24 and 25, 2006, but his back felt tighter with escalating pain making it difficult for him to walk. Appellant called in sick on December 26, 2006 and was seen by his family physician that day. He had a magnetic resonance imaging (MRI) scan of his back on December 27, 2006. Appellant was subsequently referred to Dr. Jordan and Dr. Gregory Mavian, an osteopath specializing in neurological surgery. On March 18, 2007 he stated that he began working as a letter carrier on February 15, 1986. Appellant explained that his job required him to carry, case and deliver mail. His back pain started on December 24, 2006 and appellant described his subsequent medical treatment.

In an April 2, 2007 treatment note, Dr. Jordan stated that appellant's history revealed that he carried mail on December 24, 2006 through snow and adverse conditions. He advised that appellant had no prior history of back problems and stated as follows:

"[Appellant] apparently injured his back while carrying the mail and developed a significant disc bulge enough to cause his sciatic pain down the right leg. The history, MRI [scan] results, pain pattern and physical exam[ination] are all consistent with this type of lumbar injury. Once the bulge in the lumbar disc occurs, it often takes a day or two for enough nerve irritation to cause the inflammatory cascade that results in sciatic pain. This, again, is absolutely no surprise and entirely consistent with the mechanism of injury."

He submitted the MRI scan test results of December 27, 2006, which diagnosed diffuse disc protrusion at L4-5 and noted an eccentric component asymmetrically projecting into the right neural foramen contiguous to the exiting L4 nerve root.

On December 26, 2006 Dr. John Adams, a family medicine specialist, examined appellant's hip, back and right leg. He tested appellant's range of motion and prescribed

medication. In a treatment note dated January 8, 2007, Dr. Adams reexamined appellant's hip and back, noting that there was no new injury and recommended decompression therapy treatment, physical therapy and epidural injections.

In a January 8, 2007 treatment note, Dr. Mavian reviewed the MRI scan and noted degenerative changes at L4-5, marked degeneration at L5-S1 with decreased disc spaces and some protrusions at L4-5 and L5-S1. He recommended treatment through muscle relaxants, pain medications and active physical therapy. In an addendum, Dr. Mavian stated that appellant was unsure whether his condition was work related. He noted that he did not have the ability to state if the condition was work related given the short time of the encounter since the onset of symptoms began.

Appellant submitted a December 26, 2006 work release form signed by Dr. Adams, who diagnosed radicular back pain and disc protrusion of the nerve root based on a physical examination and an MRI scan. Dr. Adams advised that appellant could not return to work. In a January 18, 2007 work release form, he advised that appellant remained unable to work due to his back condition until February 19, 2007.

On May 4, 2007 Dr. Adams stated that the MRI scan showed abnormality of the spine/disc/nerve root. He also noted the marked loss of motion and that appellant was off work to receive treatment.

Appellant submitted a supplemental narrative statement dated May 6, 2007, which reiterated his previous statements regarding his work activities.

In a decision dated May 23, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between his back condition and his federal employment.

Appellant filed a request for an oral hearing on June 20, 2007, which took place on February 21, 2008. The Office hearing representative noted that he would keep the record open for 30 days to allow appellant the opportunity to submit additional medical evidence. No medical evidence was for the coping.

In a decision dated April 8, 2008, the Office hearing representative affirmed the Office's decision, finding that appellant provided insufficient medical evidence to establish that his back condition was causally related to his employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.¹

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.²

The medical evidence required to establish a causal relationship 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 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 appellant, 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.³

ANALYSIS

The record supports that appellant is a letter carrier who carried mail on a daily basis at work. The medical evidence supports that he was diagnosed with protrusions in his low back. However, appellant has not submitted sufficient medical evidence to establish that his work duties caused or aggravated his diagnosed medical condition.

In an April 2, 2007 treatment note, Dr. Jordan noted that appellant worked as a mail carrier on December 24, 2006 through snowy and adverse conditions. He opined that appellant had "apparently" injured his back while carrying mail and developed a disc bulge. However, this opinion is insufficient to establish causal relationship. The Board notes that Dr. Jordan's opinion in support of causal relationship is couched in speculative terms given that he stated that appellant "apparently" injured his back while working. The speculative nature of his opinion lacks the reasonable medical certainty required to establish causal relationship between appellant's disc protrusion and his employment activities.⁴ In the February 23, 2007 CA-20 form, Dr. Jordan opined that appellant's condition was caused or aggravated by his employment activities and stated that the mechanisms of carrying mail was consistent with injury. This statement fails to establish causal relationship because the physician did not provide a full description of appellant's work duties of or a reasoned explanation of how such duties would

¹ *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor Woodhams*, 41 ECAB 345 (1989).

⁴ See *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant "may have ruptured" and that the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion).

cause or aggravate any preexisting back condition. Dr. Jordan's February 7, 2007 duty status report listed a disc bulge as appellant's "diagnosis due to injury." Again, he did not explain the process by which carrying mail would have caused or aggravated a disc bulge condition. Without a medically rationalized explanation of causal relationship, appellant has not established that he sustained an occupational disease in the performance of duty.⁵

In a January 8, 2007 treatment note, Dr. Mavian stated that he was unable to determine whether appellant's condition was work related. Because he was unable to address the cause of appellant's condition, this treatment note is insufficient to establish that appellant's low back condition was caused by his work duties.

Appellant also submitted several medical records from Dr. Adams. The December 26, 2006 and January 8, 2007 treatment notes state that his hip and back were examined and treatment was recommended. However, Dr. Adams did not address what caused or aggravated appellant's condition. He made no reference to appellant's employment activities. On May 4, 2007 Dr. Adams noted appellant's spine, disc and nerve root abnormalities without addressing causal relationship. Similarly, in the December 29, 2006 and January 18, 2007 work release forms, Dr. Adams provided a diagnosis without further elaboration. His reports do not establish causal relationship. The December 27, 2006 MRI scan merely diagnosed appellant's disc protrusion but did not address the cause of the back condition. Therefore, this evidence is insufficient to establish appellant's claim.⁶

The Board finds that appellant has not submitted sufficient medical evidence to establish a causal relationship between his work activities and his disc protrusion or other low back condition. Consequently, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an occupational disease causally related to his work activities.

⁵ See *supra* note 3.

⁶ See A.D., 58 ECAB __ (Docket No. 06-1183, issued November 14, 2006) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 8, 2008 and May 23, 2007 are affirmed.

Issued: January 29, 2009
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