

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

P.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 09-2285
Issued: August 20, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2009 appellant filed a timely appeal from the June 10, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on August 26, 2005 causally related to his employment.

FACTUAL HISTORY

On December 12, 2005 appellant, a 47-year-old custodian, filed a traumatic injury claim (Form CA-1) for an L4 disc bulge, back spasms and lower back pain. He attributed these injuries to an August 26, 2005 incident when, while mowing a sloped area of grass, the riding mower flipped over and he landed on his back.

Appellant submitted an April 24, 2002 certificate documenting that he received 7.5 hours of training on postal vehicles, specifically "Sedan Thru ½ Ton & L.L.V."

In an October 27, 2005 report, Dr. Steven P. Payne, a Board-certified diagnostic radiologist, related that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed a moderate diffuse L4 disc bulge flattening the thecal sac.

In a November 7, 2005 note, Dr. Edwin D. Schoonover, Board-certified in family medicine, related that some of appellant's employment activities "aggravate[d] his disabilities." He opined that appellant should not "engage in lawn mowing or weed eating."

Appellant submitted correspondence dated November 14 and 23 and December 15, 2005.

In a November 14, 2005 report, Dr. Schoonover diagnosed low back pain and provided work restrictions.

Appellant submitted a December 1, 2005 note signed by Marvin P. Williams, a coworker.

On January 30, 2006 Dr. Schoonover diagnosed back pain with degenerative disc disease at the L4-5 level, "per[o]neal nerve palsy," chronic bilateral knee pain, benign prostatic hyperplasia and hypercholesterolemia. He opined that appellant attained maximum medical improvement and provided work restrictions.

On February 1, 2006 Dr. Schoonover diagnosed knee and back pain as well as "per[o]neal nerve palsy" and opined that these conditions were "caused by or at least aggravated by" the August 26, 2005 employment incident.

In December 1, 2005 and April 3, 2006 notes, appellant described the events of August 26, 2005 and the medication prescribed to treat his condition. He also submitted an undated note signed by Thomas Haynes.

By decision dated May 1, 2006, the Office denied the claim, finding that, although appellant established the August 26, 2005 incident occurred as alleged, he failed to demonstrate that this incident caused his medical condition.

On May 16, 2006 appellant requested reconsideration. He alleged that MRI scans showed new disc bulges following his August 2005 work incident.

Appellant submitted a December 30, 1996 report signed by Dr. Mark H. Awh, a Board-certified diagnostic radiologist, who reported that an MRI scan of appellant's lumbar spine revealed a mild bulge at the L4-5 level as well as sacralization of the L5 vertebral body.

Appellant submitted a March 1, 2006 note signed by Bob Hattan, an employing establishment operations manager.

In a November 1, 2005 report, Dr. Ijindah M. Uriri, Board-certified in family medicine, relates that an MRI scan of appellant's lumbar spine revealed a moderate diffuse L4 disc bulge.

In a May 12, 2006 note, Dr. Ronald F. Francis, Board-certified in family medicine, reviewed appellant's history of injury and course of treatment.

Appellant submitted an unsigned September 30, 2005 treatment note and a treatment note bearing an illegible signature. Also submitted were a March 1, 2006 note signed by Dave Flippo, a safety and health manager, as well as a May 12, 2006 note signed by Dr. Ronald F. Centner, Board-certified in family medicine.

By decision dated August 29, 2006, the Office denied modification of its May 1, 2006 decision because the evidence of record did not demonstrate that the August 26, 2005 employment incident caused his medical condition.

Appellant submitted a report dated February 29, 2000 in which Dr. Payne reported that an MRI scan of appellant's lumbar spine revealed a mild broad-based bulge at the L4-5 level.

Appellant submitted an October 27, 2005 note signed by a physician's assistant and a September 7, 2006 note in which Dr. Justin D. Roby, Board-certified in family medicine, reviewed appellant's history of injury and course of treatment.

Appellant submitted a November 1, 2005 report in which Dr. Payne related that an MRI scan of appellant's lumbar spine revealed a moderate diffuse L4 disc bulge flattening the thecal sac.

On September 26, 2006 appellant requested reconsideration.

Appellant also submitted a December 8, 2006 note in which Dr. Juan S. Dinkins, an orthopedic surgeon, reviewed appellant's course of treatment. Dr. Dinkins noted that he had reviewed appellant's MRI scans and opined that the MRI scans "have progressed" since the initial scan in December 1996. He also noted that appellant "apparently" was involved in an accident at work on August 26, 2005; however, he concluded that "it is difficult for me to provide him with my appropriate assessment because I examined him almost a year afterward."

By decision dated January 11, 2007, the Office denied modification of its August 29, 2006 decision because the evidence of record did not demonstrate that the August 26, 2005 employment incident caused his medical condition.

Appellant submitted a copy of Dr. Centner's May 12, 2006 note and Dr. Roby's September 7, 2006 note.

Appellant also submitted a January 18, 2007 note signed by a physician's assistant.

On January 19, 2007 appellant requested reconsideration.

By decision dated March 29, 2007, the Office denied modification of its prior decision because the evidence of record did not demonstrate that the August 26, 2005 employment incident caused his medical condition.

Appellant submitted a copy of Dr. Centner's May 12, 2006 note, Dr. Roby's September 7, 2006 note, Dr. Dinkins' December 8, 2006 note, the January 18, 2007 note signed by the physician's assistant and copies of congressional correspondence. Also submitted was an additional copy of Mr. Hattan's March 1, 2006 note.

In an April 2, 2007 note, appellant described the events of August 26, 2005, his symptoms and events surrounding the filing of his claim.

On May 16, 2007 appellant requested reconsideration.

By decision dated July 17, 2007, the Office denied modification of its prior decision because the evidence of record did not demonstrate that the August 26, 2005 employment incident caused appellant's medical condition.

On November 14, 2007 appellant requested reconsideration. In a November 14, 2007 note, he related that he had a new attending physician who issued a new report. The record reflects that no report was submitted with appellant's request.

By decision dated November 28, 2007, the Office denied the request without conducting a merit review.

On December 7, 2007 appellant requested reconsideration.

Appellant submitted a personal note dated December 7, 2007, as well as an additional copy of his November 14, 2007 note.

Also submitted was an August 17, 2007 note in which Dr. Carlo L. Pike, Board-certified in family medicine, reviewed appellant's history of injury and course of treatment. Dr. Pike explained:

“Prior to the accident, [appellant] had two MRI [scan]s of his lumbar spine which indicated a mild disc bulge at L4-5 that did not impact the neural foramina or thecal sac. There was no disc herniation noted in either exam[ination]. The first was dated December 30, 1996 and the second was dated February 29, 2000. [Appellant] has not had severe back pain or been incapacitated from his back until after the accident on August 26, 2005. On October 27, 2005 the MRI [scan] indicated major changes at the L3-4 disc space with narrowing of both neural foramina and a worsening of the disc bulge at L4-5 consistent with a disc herniation that impinges on the thecal sac. These changes are responsible for the radicular symptoms he is experiencing in his legs and back. They are consistent with the traumatic injury he sustained in the accident dated August 26, 2005.”

He speculated that appellant “will continue to experience pain, paresthesias and ... disability due to his injury throughout his life” and “may need surgical intervention.”

By decision dated May 22, 2008, the Office denied modification of its July 17, 2007 decision because the evidence of record did not demonstrate that the August 26, 2005 employment incident caused his medical condition.

On March 16, 2009 appellant requested reconsideration. In a supplemental statement, also dated March 16, 2009, he asserted that he was “forced into an unsafe act” because he had never used a riding mower prior to August 26, 2005 and received no training concerning its use. Appellant related that the riding mower in question was not designed for commercial use. He

asserts that he had no back problems prior to the August 26, 2005 incident and provided a timeline documenting his injury and course of treatment.

Appellant submitted a July 10, 2008 note in which Dr. Victor M. Acevedo, a family physician, reviewed appellant's history of injury and course of treatment. Dr. Acevedo noted that it was the first time that he had examined appellant. He described appellant's history of injury and medical treatment. Dr. Acevedo thereafter related that "it is my impression by evaluating the written information found on [appellant's] medical chart and provided by [him] that the injuries sustained on the working accident on August [27], 2005 are the cause of [his] chronic back pain."

Appellant submitted a November 26, 2003 report signed by a physician's assistant as well as additional copies of Dr. Uriri's November 1, 2005 report, Dr. Payne's February 29, 2000 report, Dr. Schoonover's November 7, 2005 and January 30, 2006 notes and the December 30, 1996 report signed by the physician's assistant. In addition to a copy of an American Postal Workers' Union publication which concerned reporting employment injuries and securing benefits under the Federal Employees' Compensation Act, appellant also submitted an undated note signed by James R. Sell, a human resources manager.

On January 19, 2009 Dr. Richard Davis, a Board-certified orthopedic surgeon, diagnosed lumbar spinal stenosis at the L3-5 level. Noting that a prior MRI scan revealed neural compression, he opined that the MRI scan demonstrates a causal relationship exists between the August 26, 2005 incident and appellant's condition because he had no prior history of spinal stenosis symptoms and, further, that his leg pain, "the most common symptom [associated with] spinal stenosis," arose following the August 26, 2005 incident.

In a May 18, 2009 note, appellant described his medical condition, expounded upon his claim's timeline and discussed particular pieces of medical evidence.

Finding the evidence appellant submitted with his reconsideration request did not establish a causal relationship between his condition and the established August 26, 2005 employment incident, by decision dated June 10, 2009, the Office denied modification of its May 22, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ As part of his burden, the

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.⁸

ANALYSIS

The Office accepted that the August 26, 2005 employment incident occurred as alleged. Appellant's burden is to establish that the accepted employment incident caused a medically diagnosed injury. Throughout the development of the claim he has explained his theory of the case, that MRI scans as far back as 1996 showed disc bulging, but that MRI scans after the accepted 2005 incident showed additional disc herniation.

Appellant has not met his burden of proof however because he has never submitted rationalized medical opinion evidence which explains how physiologically the accepted incident would have caused or aggravated the conditions diagnosed from the MRI scans after August 2005.

As noted above, causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence and, as appellant, his coworkers and managers

⁴ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

are not “physicians” for purposes of the Act, their lay opinions are not relevant.⁹ Because appellant has not submitted sufficient medical opinion evidence supporting his claim, the Board finds that he has not established he sustained an injury in the performance of duty on August 26, 2005 causally related to his employment.

The record indicates that appellant initially sought medical treatment from Dr. Schoonover. While Dr. Schoonover diagnosed degenerative disc disease at the L4-5 level and peroneal nerve palsy, which he opined were caused or aggravated by the August 26, 2005 incident, he never explained, with medical rationale, how the August 2005 incident would have caused or aggravated these conditions.

Appellant sought treatment from Dr. Dinkins. While Dr. Dinkins noted that there was “progression” evident on appellant’s MRI scans, he also opined that he could not offer appellant a complete assessment of his claim because he had not examined him until almost a year after the August 2005 incident.

Dr. Pike reviewed appellant’s MRI scans and noted that the changes on the scans were responsible for his radicular symptoms and were consistent with the traumatic injury he sustained in August 2005. His reports do not contain an opinion explaining how the established August 26, 2005 employment incident caused appellant’s medical condition, he merely concludes that it does.¹⁰ For this reason, Dr. Pike’s note does not establish a causal relationship between the August 26, 2005 employment incident and appellant’s medical condition.

The Board notes that appellant submitted reports from a physician’s assistant. Because healthcare providers such as nurses, acupuncturists, physician’s assistants and physical therapists are not considered “physicians” under the Act, their reports and opinions do not constitute competent medical evidence,¹¹ and accordingly, these reports do not establish the August 26, 2005 employment incident caused appellant’s condition.

Appellant submitted additional copies of Dr. Payne’s February 29, 2000 and November 1, 2005 reports, Dr. Schoonover’s November 7, 2005 and January 30, 2006 notes, Dr. Awh’s December 30, 1996 report as well as notes signed by several postal employees. As this evidence duplicates evidence that had already been contained in the record, it has no probative value and, therefore, does not establish that the August 26, 2005 employment incident caused his condition.¹²

Dr. Davis’ January 19, 2009 report and Dr. Acevedo’s July 10, 2008 note are of diminished probative value because they do not contain the necessary medical reasoning to

⁹ 5 U.S.C. § 8101(2).

¹⁰ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹¹ 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983)

¹² *Linda I. Sprague*, 48 ECAB 386 (1997).

establish the causal relationship between appellant's condition and the August 26, 2005 employment incident. The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the 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 the stated conclusions.¹³ While Dr. Acevedo and Dr. Davis opined that the August 26, 2005 employment incident caused appellant's condition, they provide no description of the mechanism of injury or an opinion, supported by medical rationale, explaining how the incident caused his condition.¹⁴ Finally, Dr. Acevedo diagnoses pain, which is a symptom, not a compensable diagnosis.¹⁵ Consequently, this evidence does not establish the causal relationship between the August 26, 2005 employment incident and appellant's medical condition.

Finally, appellant submitted pages from an American Postal Workers' Union publication concerning reporting employment injuries and securing benefits under the Act. This evidence is, at best, of general application¹⁶ and has no evidentiary value on the issue of whether specific conditions were the result of particular employment circumstances.¹⁷

An award of compensation may not be based on surmise, conjecture or speculation.¹⁸ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁹ The fact that a condition manifests itself or worsens during a period of employment²⁰ or that work activities produce symptoms revelatory of an underlying condition²¹ does not raise an inference of causal relationship between a claimed condition and employment factors.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how the established August 26, 2005 employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

¹³ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁴ *Supra* note 10.

¹⁵ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

¹⁶ *Van Dyk*, 53 ECAB 706 (2002).

¹⁷ See *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980) (newspaper clippings, medical texts and excerpts from publications are of general application and not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).

¹⁸ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹⁹ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

²⁰ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

²¹ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty on August 26, 2005 causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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