

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

R.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ossining, NY, Employer**

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**Docket No. 09-1673
Issued: March 8, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated April 27, 2009, which affirmed the denial of his occupational disease claim. 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 met his burden of proof to establish that he developed a low back condition while in the performance of duty.

FACTUAL HISTORY

On June 10, 2008 appellant, then a 34-year-old letter carrier, filed an occupational disease claim alleging that he developed low back pain as a result of carrying mail. He became aware of his condition and realized it was caused by his work on May 20, 2008. Appellant stopped work on June 6, 2008 and returned to a light-duty position on June 12, 2008.

Appellant submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated September 12, 2005. It revealed an L4-5 posterior disc herniation with ventral thecal sac, foraminal narrowing, L4-5 Grade 1 anterolisthesis related to facet hypertrophic change. On August 6, 2007 appellant sought treatment from Dr. Albert Villafuerte, a Board-certified family practitioner, for cervical and lumbar strain sustained when he was involved in a motor vehicle accident on August 8, 2005. He was also treated by Dr. Spencer Shaw, a Board-certified family practitioner, on May 21 and June 4, 2008, for low back syndrome. Dr. Shaw advised that appellant could return to work subject to various restrictions including a 15-pound lifting restriction and use of an assisted device for carrying. On June 10, 2008 appellant came under the treatment of Dr. Syeds Rahman, a Board-certified orthopedic surgeon, who diagnosed back pain and opined appellant could resume work with no acute bending or heavy carrying and lifting.

The employing establishment submitted a June 12, 2008 letter controverting the claim. It noted that appellant sustained a back injury in a motor vehicle accident prior to his employment.

In a letter dated August 4, 2008, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. The Office also requested that the employing establishment submit comments from a knowledgeable supervisor addressing appellant's claim for compensation.

Appellant submitted a May 22, 2008 letter to the employing establishment requesting light duty as a result of back pain caused by carrying a mail satchel. In an August 14, 2008 statement, he noted that he carried a heavy volume of mail using a shoulder bag and his route included walking up hills and stairs to deliver mail. Appellant worked 40 hours a week with overtime and experienced back pain, which became unbearable on May 20, 2008. He informed Robert Dini, his postmaster, of his condition and was offered a light-duty position using a pushcart. Appellant resubmitted the treatment notes from Dr. Shaw and Dr. Rahman previously of record.

In a September 11, 2008 decision, the Office denied appellant's claim on that grounds that the medical evidence was not sufficient to establish that his back condition was caused by his work duties.

On September 25, 2008 appellant requested an oral hearing which was held on February 24, 2009. In a December 29, 2005 report Dr. Villafuerte, treated appellant for neck pain and stiffness which developed following a motor vehicle accident on August 8, 2005. He diagnosed status post motor vehicle accident on August 8, 2005, cervical and lumbar myofascial pain, cervical disc bulge, lumbar disc herniation and right L5 radiculopathy. Appellant submitted a June 18, 2008 MRI scan of the lumbar spine which revealed a right foraminal disc herniation at L4-5 with mild deformity of the right L4 nerve root.

In June 19 and September 9, 2008 reports, Dr. Rahman treated appellant for low back pain with radiating symptoms down his left lower extremity. He noted findings upon physical examination of normal motor strength of the lower extremities, intact sensation, deep tendon reflexes were bilateral and symmetrical, straight leg raises were positive bilaterally with mild to moderate lumbar paraspinal spasms. Dr. Rahman diagnosed low back pain, degenerative lumbar

disc disease, lumbar radiculitis/discogenic pain syndrome, myofascial pain syndrome and lumbago. He continued appellant's work restrictions and recommended physical therapy and a back brace. In a February 26, 2009 report, Dr. Rahman reported that appellant remained clinically unchanged and was working light duty. Appellant reported working for the employing establishment where he was required to carry bags of heavy mail and experienced progressive back pain which peaked on May 20, 2008. Dr. Rahman noted an essentially normal physical examination and diagnosed low back pain, resolving discogenic pain, resolving lumbar radiculitis, myofascial pain syndrome and lumbago. He noted that appellant experienced some relief with physical therapy and epidural injections and advised that he could continue light duty. Dr. Rahman stated that, in light of the clinical findings and the MRI scan findings, it appeared that appellant's present clinical status could have resulted from the reported back injury sustained May 20, 2008.

The employing establishment submitted a March 17, 2009 report from Dr. Gerald Singer, a Board-certified internist and employing establishment physician, who noted reviewing the MRI scan reports of the lumbar spine dated September 14, 2005 and June 18, 2008 and opined that there was no significant change and some overall improvement reported on the June 18, 2008 examination.

In a decision dated April 27, 2009, the hearing representative affirmed the September 11, 2008 decision.

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 timely filed within the applicable time limitation period of the Act, that the injury was sustained 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 upon 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) 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 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 claimant. The medical evidence required to establish causal relationship is generally 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

¹ Gary J. Watling, 52 ECAB 357 (2001).

claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.²

ANALYSIS

It is not disputed that appellant's duties as a letter carrier include prolonged standing and walking while carrying a mailbag. He was diagnosed with degenerative lumbar disc disease, lumbar radiculitis/discogenic pain syndrome, myofascial pain syndrome and lumbago. Appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions are causally related to his employment duties as a letter carrier. On August 4, 2008 the Office advised him of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors caused or aggravated his claimed condition.

Appellant submitted reports from Dr. Villafuerte dated December 29, 2005 and August 6, 2007, who treated him for neck and back pain, which developed after he was involved in a motor vehicle accident on August 8, 2005. Dr. Villafuerte diagnosed status post motor vehicle accident on August 8, 2005, cervical and lumbar myofascial pain, cervical disc bulge, lumbar disc herniation and right L5 radiculopathy. The medical evidence documents preexisting degenerative disease to appellant's cervical and lumbar spine.

In reports dated May 21 and June 4, 2008, Dr. Shaw noted appellant's treatment for low back pain syndrome. On June 4, 2008 he continued appellant's work restrictions of lifting limited to 15 pounds and use of an assisted device for carrying. However, these notes did not offer any opinion on how his caused or aggravated the diagnosed condition.³ Dr. Shaw did not address the preexisting injury to appellant's back or explain how his work would contribute to any disability or need for treatment. Consequently, these reports are of diminished probative value and do not establish appellant's claim.

In a February 26, 2009 report, Dr. Rahman noted that appellant reported working for the employing establishment where he was required to carry bags of heavy mail and experienced a progression of back pain, which peaked on May 20, 2008. He diagnosed low back pain, resolving discogenic pain, resolving lumbar radiculitis, myofascial pain syndrome and lumbago. Dr. Rahman opined that, in light of the clinical findings and the MRI scan findings, it "appears that [appellant's] present clinical status could have been resulted from the reported injury he sustained back on May 20, 2008." Although he provided some support for causal relationship, it is insufficient to establish the claimed lumbar condition. Dr. Rahman, provided only speculative support for causal relationship by noting that appellant's condition "could have been" related to the back injury of May 20, 2008. He provided no medical reasoning to support causal

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

relationship. Additionally, Dr. Rahman failed to obtain a history of appellant's August 8, 2005 motor vehicle accident and preexisting back injury. He did not address how appellant's duties aggravated or contributed to disability. Therefore, Dr. Rahman's reports are insufficient to meet appellant's burden of proof.

The diagnostic tests of record are insufficient to establish appellant's claim. They do not provide a physician's opinion on the causal relationship between appellant's job factors and diagnosed medical conditions.

On appeal, appellant's asserts that his condition is employment related as he passed a physical examination before he was hired by the employing establishment. However, an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁴ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence. The Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

⁴ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2009 and September 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 8, 2010
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