

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

R.E., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Austin, TX, Employer

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**Docket No. 10-679
Issued: November 16, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant filed a timely appeal of a December 1, 2009 decision of the Office of Workers' Compensation Programs denying modification of an August 5, 2009 decision denying appellant's claim for compensation. 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 sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On May 1, 2009 appellant, then a 53-year-old rural mail carrier, filed an occupational disease claim alleging that he developed arthritis in his back due to repetitive twisting and contorting while delivering mail. He first realized that his employment activities caused or

aggravated his claimed arthritis condition on February 2, 2006. Appellant stopped work on April 23, 2009 and returned two weeks later.¹

In a statement dated April 22, 2009, appellant reported experiencing severe pain on that date and that he was transported to a hospital for severe muscle spasm. He attributed his condition to repetitive motion while delivering mail, including twisting and contorting. Appellant contended that he sustained nerve damage to his right leg.

An April 25, 2009 nurse's note advised that appellant could not work for five days. In an April 29, 2009 physical therapy referral form, Dr. William Roden, a Board-certified orthopedic surgeon, diagnosed L4-5 herniated nucleus pulposus (HNP) with right leg pain. Dr. Roden advised that appellant could not work for two weeks. In a May 15, 2009 duty status report, Dr. Jonathan Gottlieb, a Board-certified internist, found ruptured disc at L4-5 and diagnosed herniated disc at L4-5.

On May 21, 2009 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

In an undated lumbar magnetic resonance imaging (MRI) scan referral form, Dr. Roden diagnosed L4-5 with HNP of the right side. In an April 30, 2009 lumbar MRI scan report, Dr. Tamina Blais, a Board-certified diagnostic radiologist, found broad-based right paracentral disc extrusion originating from the L4-5 disc level. He also found mild central canal stenosis, shallow left paracentral disc protrusion superimposed upon degenerative bulge at the L5-S1 level and desiccation of L2-3 and L3-4 discs that are not associated with focal protrusion or bulge.

On May 5, 2009 Dr. Gottlieb noted appellant's complaint of right lower extremity pain. He listed that appellant worked as a postal carrier and that over the past three years appellant had incidents where he twisted his back and had back pain. Dr. Gottlieb also noted that on April 30, 2009 appellant injured his back and that his right leg became numb a couple of days after. He diagnosed right L5 disc herniation with radiculopathy. On May 12, 2009 Dr. Gottlieb noted appellant's complaint of right leg pain and pain from right L4-5 disc herniation. Upon examination, he found decreased sensation in the L5 distribution of the right leg. Dr. Gottlieb noted that diagnostic tests found right L4-5 disc herniation with intractable pain. He recommended a microdiscectomy.

In a May 30, 2009 statement, appellant indicated first experiencing problems on February 2, 2006. He returned to work two weeks after the work incident, but noted he sustained a more severe work incident on April 30, 2009 for which pain had been present ever since. Appellant had surgery on May 20, 2009. He noted having arthritis, but no prior orthopedic injuries. A nurse's report, dated April 25, 2009, noted appellant's complaint of back pain of the lumbar region beginning two days prior. It also noted a history of recent trauma of a rotating injury at work.

In an August 5, 2009 decision, the Office denied appellant's claim finding that he did not establish that the claimed back condition was causally related to the accepted work activities.

¹ The record does not contain an exact date of appellant's return to work.

Appellant requested reconsideration on September 9, 2009. In a statement of the same date, he indicated that he hurt his back while delivering packages and that he notified his employing establishment.

In an August 25, 2009 report, Dr. Gottlieb noted initially seeing appellant on May 5, 2009 for right leg pain. At that time, appellant indicated he was delivering packages at work on April 30, 2009 when he felt a strain in his right lower back after bending over to pick up a package. Dr. Gottlieb indicated that appellant underwent surgical decompression of his herniated disc on May 20, 2009 and that he was cleared for activities as tolerated.

In an October 7, 2009 telephone memorandum, appellant indicated that he wanted to clarify that he was claiming that his job duties caused or contributed over time to arthritis in his back, but that he also had a herniated disc from an April 30, 2009 incident.

In a December 1, 2009 decision, the Office denied modification of its August 5, 2009 decision. It found that the medical evidence submitted was insufficient to warrant modification of its August 5, 2009 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 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.²

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.³

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

² *J.E.*, 59 ECAB 119 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *D.I.*, 59 ECAB 158 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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.⁴

ANALYSIS

The record supports that appellant's duties as a rural mail carrier involve repetitive twisting motions. However, the medical evidence is insufficient to establish that these employment duties caused or aggravated his back condition.

Appellant submitted several reports from Dr. Gottlieb, but none are sufficient to establish that he has arthritis or to support a causal relationship between his claimed back condition and his employment activities. Dr. Gottlieb's May 5, 2009 report noted that appellant sustained several incidents of twisting his back over the past three years and a particular back incident occurring on April 30, 2009. He diagnosed right L5 disc herniation. Dr. Gottlieb did not specifically address whether appellant's diagnosed condition was caused or aggravated by his duties as a postal carrier. 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.⁵ Moreover, Dr. Gottlieb did not demonstrate that he had a complete understanding of appellant's factual and medical background as he generally noted that appellant had twisted his back on several occasions but did not identify any particular cause for his back condition.⁶ In reports dated May 12 and 15, 2009, he diagnosed herniated disc at L4-5, but did not address the issue of causal relationship. Dr. Gottlieb's August 25, 2009 report noted appellant's report of delivering packages at work on April 30, 2009 when he strained his lower back. To the extent that this report supports causal relationship, it is of limited probative value as he merely reiterated appellant's belief regarding the cause of his condition, rather than provide an independent medical opinion on causal relation.⁷ Dr. Gottlieb did not explain the reasons delivering packages would cause or aggravate a diagnosed condition.

The reports from Drs. Roden and Blais do not support appellant's claim as they diagnosed L4-5 herniated discs without discussing whether appellant's employment activities as a mail carrier caused or aggravated this back condition. As noted, medical evidence without an opinion on causal relationship is of limited probative value.

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

⁶ *See supra* note 4.

⁷ *See William Nimitz*, 30 ECAB 567 (1979) (where the Board has held that an award for compensation may not be predicated upon appellant's belief of causal relation as such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability); *see also Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002) (the opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).

The record also contains several nurses' reports. However, registered nurses and licensed practical nurses are not "physicians" as defined under the Act. Their opinions are of no probative medical value.⁸

For these reasons, the medical evidence does not establish that appellant sustained an occupational disease in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 1 and August 5, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 16, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ *Roy L. Humphrey*, 57 ECAB 238 (2005); *see* 5 U.S.C. §8101(2) (defining the term "physician"); *see also Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).