

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

R.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cols, OH, Employer**

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**Docket No. 10-927
Issued: November 24, 2010**

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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2010 appellant, through his attorney, filed a timely appeal from a January 13, 2010 Office of Workers' Compensation Programs' merit decision which denied 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 back condition while in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board.¹ In a decision dated November 20, 2008, the Board affirmed the Office decisions of September 19, 2007 and March 27, 2008, finding that appellant did not establish that he sustained a low back condition due to factors of his federal employment. The facts of the case are set forth in the Board's prior decision and incorporated herein by reference.

On October 12, 2009 appellant requested reconsideration and submitted a September 11, 2009 report from Dr. James H. Uselman, a Board-certified neurologist, who noted a history of treating appellant since May 24, 2007 for low back pain with radiation into his legs. Dr. Uselman performed an L4-5 bilateral transforaminal discectomy with interbody fusion on August 3, 2007.² He noted seeing appellant on September 11, 2008 and prescribed a course of physical therapy, after which he released appellant to light-duty work. Dr. Uselman noted that he had preexisting degenerative disc disease at L4-5 and L5-S1. He stated that, according to appellant's history, his daily job of carrying a heavy mailbag on a regular basis, progressively and insidiously worsened the symptoms that he experienced as a result of his preexisting condition. Dr. Uselman opined that appellant had preexisting degenerative disc disease at L4-5 and L5-S1 but that his job as a mail carrier carrying heavy mailbags substantially contributed to the progression and acceleration of his disease to the point that he required lumbar surgery. He advised that appellant's condition improved but he would probably continue to have long-term chronic back problems that would require additional care.

By a decision dated January 13, 2010, the Office denied modification of the prior 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.³

¹ Docket No. 08-1484 (issued November 20, 2008). On July 8, 2007 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that he developed a back condition while walking, lifting, casing and standing at work. He became aware of his condition on October 1, 2003. Appellant stopped work on June 15, 2007. He was diagnosed with degenerative disc disease at L4-5 for which he underwent surgery on August 3, 2007.

² Dr. Uselman noted that following surgery appellant had an accident after stepping from a curb. He also noted that appellant slid in the shower and twisted his back.

³ *Gary J. Watling*, 52 ECAB 357 (2001).

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 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.⁴

ANALYSIS

It is not disputed that appellant's duties as a letter carrier included prolonged standing and walking, bending, lifting and carrying a mailbag while performing his work duties. It is also not disputed that he has been diagnosed with degenerative disc disease. However, appellant has not submitted sufficient medical evidence to support that degenerative disc disease or any other diagnosed condition is causally related to specific employment factors or conditions. He did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted a September 11, 2009 report from Dr. Uselman, who reviewed his history of treating appellant. Dr. Uselman advised that, according to appellant's history, his daily job of carrying a heavy mailbag on a regular basis progressively and insidiously worsened the symptoms from his preexisting condition until he required surgery. He indicated that appellant will probably continue to have long-term chronic back problems and would require additional care. However, Dr. Uselman failed to provide a rationalized opinion explaining the reasons why the diagnosed preexisting degenerative disc disease at L4-5 and L5-S1 was aggravated by carrying a mailbag or other factors of employment.⁵ He did not explain the process by which activities such as carrying a mailbag would cause or aggravate the diagnosed back condition and why such condition would not be due to the natural progression of the preexisting degenerative condition or his diagnosed obesity as noted by Dr. Sadar. Instead, Dr. Uselman stated his conclusion on causal relationship but did not provide medical reasoning explaining the basis of his conclusion. The need for medical reasoning, or rationale, is

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *See Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

particularly important in a case such as this where appellant has a preexisting condition in the same area of the body for which he claims an occupational disease. Therefore, the opinion of Dr. Uselman is insufficiently rationalized to meet appellant's burden of proof.

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.⁶ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's 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.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2010
Washington, DC

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

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

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

⁶ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).