

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Manchester Center, VT, Employer)

**Docket No. 10-2254
Issued: July 20, 2011**

Appearances:

Patricia K. Turley, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 3, 2010 appellant filed a timely appeal from a March 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 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 her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 25, 2006 appellant, then a 54-year-old part-time flexible clerk, filed an occupational disease claim alleging that she sustained back pain, swollen discs and left hip symptoms due to standing on concrete workroom floors. She added that her left hip was higher

¹ 5 U.S.C. § 8101 *et seq.*

than her right as a result of her osteoarthritis and previous job duties as a letter carrier. Appellant became aware of her condition and its relationship to her employment on August 10 and October 6, 2006, respectively. She stopped work on August 7, 2006.² A supervisor noted that appellant had been given reduced hours and sedentary tasks to accommodate chronic pneumonia and fatigue that she experienced between October 2005 and January 2006.

In an August 22, 2006 medical note from Dr. Peter C. Stickney, an internist, appellant presented with low lumbosacral and coccygeal pain with radiation to the left buttock and upper thigh. Dr. Stickney remarked that he could not determine the etiology of her pain. An August 24, 2006 computerized tomography (CT) scan report from Dr. James N. Rademacher, a Board-certified diagnostic radiologist, demonstrated mild L3-L4 and L4-L5 disc bulging.

In August 31 and September 14, 2006 notes, Dr. Stickney diagnosed mild degenerative arthritis and lumbosacral spondylosis. Appellant complained that her ongoing low back pain hindered her ability to sit and stand. She received an interlaminar epidural steroid injection from Dr. Michael J. Kenosh, a Board-certified physiatrist, on September 19, 2006.³ In a September 22, 2006 note, Dr. Stickney related that appellant continued to have persistent low back pain and would pursue a workers' compensation claim as she "does not feel she is going to be able to go back to her usual work as a postman because she is on her feet constantly."

A physical therapist indicated in a September 25, 2006 report that appellant was delivering mail in 1986 when she fell and injured her sacrum and coccyx. Thereafter, appellant experienced protracted, moderate-to-severe back pain that worsened whenever she stood or walked.⁴

In an October 6, 2006 note, Dr. Stickney advised that appellant exhibited left hip pain on range-of-motion (ROM) and weight-bearing activity. An October 6, 2006 left hip x-ray report from Dr. Roshan Siva, a diagnostic radiologist, revealed osteoarthritis. Dr. Stickney concluded in October 16 and 30, 2006 notes that appellant could not return to work secondary to continuing pain.

The employing establishment controverted the claim in a November 29, 2006 letter, arguing that appellant had preexisting injuries and the medical evidence did not sufficiently demonstrate that her employment duties contributed to the alleged condition.

On December 5, 2006 the Office informed appellant that the evidence was insufficient and advised her about the evidence needed to establish her claim. Appellant responded with a December 28, 2006 letter requesting an extension to consult legal counsel.

By decision dated February 22, 2007, the Office denied appellant's claim, finding the medical evidence insufficient to establish that her accepted employment activity caused or aggravated a claimed medical condition.

² Appellant formally retired in 2009.

³ Dr. Kenosh also administered injections on October 4, 2006 and October 17, 2007.

⁴ The physical therapist attended to appellant throughout 2006 and 2007.

Appellant requested reconsideration on July 12, 2007 and described her positions with the employing establishment since 1985, including letter carrier, postmaster and part-time flexible clerk. She detailed that her occupational disease originated from two causes, both of which occurred while she was a letter carrier. First, appellant repetitively carried a mailbag with her left shoulder for nine years. She explained that the mailbag repeatedly slipped off her shoulder, forcing her to lean to the right and raise her left hip. Second, appellant slipped and fell on her tailbone in January 1988 during a postal delivery. Subsequently, the condition was aggravated by her duties as a postmaster and part-time flexible clerk, which primarily entailed standing on a concrete floor for at least eight hours a day.

In a July 25, 2007 report, Dr. Stickney noted treating appellant for a variety of conditions since 1991. He advised that, on August 22, 2006, she presented with complaints of acute low back and left hip pain, reporting that her symptoms had escalated to the point that she could not walk, stand or sit for any period of time. Dr. Stickney noted appellant's continued treatment for persisting symptoms and diagnoses of mild L3-L4 and L4-L5 disc bulging with spondylosis and left hip osteoarthritis. He advised that appellant's symptoms had not resolved with pain medication, steroid injections and physical therapy. Dr. Stickney opined:

"It is my understanding that [appellant] worked as a letter carrier for many years, and then became a postmaster. Although I do not know the full extent of what her job responsibilities were, I do know that the constant lifting, carrying a letter bag, bending, walking on uneven ground and standing on cement floors for long periods of time could have most definitely exacerbated her arthritis.... It is my medical opinion that [appellant] is disabled and should not return to work in any capacity for the foreseeable future."

On November 5, 2007 the Office denied modification of the February 22, 2007 decision.

Appellant requested reconsideration on November 3, 2008 and submitted numerous medical records. In an October 30, 2008 supplementary report, Dr. Stickney specified:

"I am aware of the physical requirements of [appellant's] job [Appellant] was a postal clerk and acting Postmaster from 1994 until 2006.... She lifted frequently, taking mail in large bags from trucks into building, lifting bags onto tables, and sorting mail, including packages. [Appellant] did the reverse, taking outgoing mail, sorting and packing it into heavy bags, then placing it onto trucks. Some packages were heavy and/or bulky. [Appellant] performed all work while standing and walking on concrete floors. All of these tasks involved frequent bending and rotation of her spine; frequent lifting was involved. [Appellant] worked at least 40 hours per week, and while acting as Postmaster, worked significant overtime because of staff shortages and office renovations. In my opinion, the work that she performed from 1994 until 2006 contributed to her current low back disability."

His medical notes for the period November 13, 2006 to August 8, 2008 traced appellant's continued complaints of low back and left hip pain. In a November 5, 2007 treatment note, Dr. Stickney commented that she was totally disabled for "any kind of meaningful employment

which involved her standing for long period[s] of time.”⁵ On July 11, 2008 he stated that appellant continued having significant pain in her lumbosacral spine and left hip with weight bearing and ambulation. Dr. Stickney noted that, in her job, appellant was on concrete for a prolonged period every day which “aggravated significantly” her discomfort.

Emergency department records from 1984, 1985 and 1988 showed that appellant strained her lower back on October 1, 1984 and September 27, 1985 due to frequent lifting, whereas she slipped on ice, fell and struck her coccyx on January 28, 1988.

On January 22, 2009 the Office denied modification of the November 5, 2007 decision.

Appellant requested reconsideration on January 14, 2010 and furnished a December 4, 2009 medical report from Dr. Sikhar Banerjee, a Board-certified physiatrist, who evaluated her medical file, employment activities and history of back problems, specifically noting her previous injuries in 1984 and 1988.⁶ Between September 1988 and August 2006, appellant related that she had intermittent back pain. By August 2006, the pain became so persistent and intense that she stopped work and underwent intensive treatment with minimal improvement. Appellant “[could not] identify any specific aggravating factor, apart from activity....” On examination, Dr. Banerjee observed restricted lumbar spine movement and lumbosacral tenderness on palpation. He pointed out that the radiological evidence supported degenerative disc disease, which was consistent with the symptoms. Dr. Banerjee concluded:

“It is my opinion with a reasonable degree of medical certainty that [appellant’s] persistent complaint of back pain was contributed by two recorded injuries at work and then subsequent moderately heavy manual work requiring lifting up to 60 to 70 pounds. This conclusion of causality of her pain is partly based on her statement that she had persistent pain from September 1988 and in August 2006 when available record indicates that she sought medical attention for her problem. In conclusion, it is my opinion with a reasonable degree of medical certainty that this patient’s persistent low back pain is causally related to injuries suffered at work and persistent with moderately heavy manual work.”

On March 11, 2010 the Office denied modification of the January 22, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the 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 an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are

⁵ Dr. Stickney also mentioned that appellant was involved in an automobile accident on January 31, 2008, but indicated in his February 14, 2008 treatment noted that the residuals of the automobile accident had “pretty much subsided.”

⁶ Appellant related that she fell and injured her lower back in 1986 when she carried a mail tray and lost her balance.

causally related to the employment injury.⁷ 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.⁸

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁹ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.¹¹

ANALYSIS

The Board finds that the case is not in posture for decision.

An employee who claims benefits under the Act has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done.¹²

There is no dispute that appellant's former job duties required continuous standing, walking, lifting, carrying, bending, twisting, reaching, pushing and pulling. The medical

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *See S.P.*, 59 ECAB 184, 188 (2007).

¹⁰ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *R.R.*, Docket No. 08-2010 (issued April 3, 2009).

¹¹ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 8 at 352.

¹² *William J. Cantrell*, 34 ECAB 1233 (1983); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

evidence reflects firm diagnoses of L3-L4 and L4-L5 disc bulging, lumbosacral spondylosis and left hip osteoarthritis. The Office denied the occupational disease claim on the basis that the medical evidence was insufficient to establish that these work factors aggravated her condition.

Dr. Stickney's treatment notes from August 22, 2006 to August 8, 2008 documented appellant's history of low back and left hip problems and advised that she became totally disabled as a result. In his July 11, 2008 treatment note, he stated that appellant was on concrete for a prolonged period every day at work which "aggravated significantly" her discomfort. Dr. Stickney specified in July 25, 2007 and October 30, 2008 reports that routine employment tasks that she performed since 1994 for 12 years, which involved continuous lifting, sorting and loading of mailbags, bending, spinal rotation, and standing and walking on concrete floors, exacerbated her bulging lumbar discs, spondylosis and osteoarthritis. Dr. Banerjee shared a similar assessment in a December 4, 2009 report, which noted appellant's history and found that moderately-heavy lifting up to 60 to 70 pounds worsened appellant's preexisting injuries.

The Board notes that these reports are not sufficiently rationalized to meet appellant's burden of proof as they do not specifically explain the reasons why particular job duties caused or aggravated the diagnosed conditions and they do not explain why appellant's condition would not be attributable to nonemployment or preexisting conditions. However, the reports of Drs. Stickney and Banerjee nonetheless raise an inference of causal relationship between her claimed conditions and the identified work factors and are sufficient to require further medical development by the Office.¹³ Both physicians obtained thorough injury histories, conducted physical examinations, comprehensively reviewed past medical and diagnostic records and rendered opinions that were consistent with their findings.

On remand the Office should prepare a statement of accepted facts and develop the medical evidence by referring appellant to an appropriate Board-certified specialist for a rationalized medical opinion regarding whether appellant's former job duties caused or aggravated her low back or left hip conditions. After conducting such further development as it may find necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

¹³ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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