

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEO MURRAY and U.S. POSTAL SERVICE,  
POST OFFICE, St. Petersburg, FL

*Docket No. 99-2524; Submitted on the Record;  
Issued March 29, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that his herniated disc was causally related to his accepted employment injury of March 3, 1993.

On March 4, 1993 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim stating that on March 3, 1993, he injured his low back while moving a tray of mail.<sup>1</sup>

In a March 4, 1993 report, Dr. George Rieth, Board-certified in orthopedic surgery, noted that he had not seen appellant since January of 1992 when he had treated appellant for low back ailments, specifically lumbosacral disc disease. Dr. Rieth indicated that appellant was bending over getting a tray of mail out of a truck when he experienced severe low back pain subsequently manifested by radicular pain into both lower extremities. He stated that appellant was able to complete the day's work but because of severe pain when attempting to get up or sit down, appellant was essentially disabled. Dr. Rieth noted that x-rays of the lumbosacral spine showed significant degenerative disc disease and a compromise of the intervertebral foramina of L5-S1. Dr. Rieth's diagnosis was an acute lumbosacral sprain superimposed on preexisting lumbosacral disc disease, for which appellant had a service-connected disability.

A March 22, 1993 magnetic resonance imaging (MRI) revealed a small right paracentral disc herniation at the level of the L4-5 disc. Dr. Jaime Bonilla, a Board-certified diagnostic radiologist, noted slight narrowing of the L4-5 and L5-S2 disc consistent with early degeneration but no signs of spinal stenosis.

In a March 26, 1993 certificate, Dr. Rieth diagnosed a herniated nucleus pulposus (HNP) at L4-5 and radiculopathy.

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<sup>1</sup> Appellant had previous injuries to his back on January 7, 1991 (case A6-506244) and November 20, 1991 (case A6-530512). The Office accepted these claims for lumbar or lumbosacral strains. He was also receiving benefits from the Veterans Administration (VA) for degenerative arthritis. The VA records indicate that appellant had degenerative low back changes since at least 1972.

On April 28, 1993 the Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain. The Office also indicated that appellant should provide a detailed narrative report from his attending physician that included a history of injury and an opinion on the relationship of any continuing disability to the accepted injury.

In a May 12, 1993 letter to the Office, appellant requested clarification of the April 28, 1993 acceptance letter. He provided a detailed history of his injuries and stated that the protruded lumbar disc at L4-5, as diagnosed by Dr. Rieth and confirmed by an MRI of March 22, 1993 should be covered as part of the injury.

In a June 8, 1993 treatment note, Dr. Rieth noted that appellant had a remission from his protruded lumbar intervertebral disc. He did not have any radicular pain, but was limited to lifting no more than 50 pounds and released to his usual work.

In a January 23, 1995 treatment note, Dr. Rieth stated that appellant was in acute distress with pain across the back and coursing down the right lower extremity along the distribution of L5. Appellant had been doing reasonably well until the past Friday when he coughed rather violently and experienced very severe pain across the small of his back and pain radiating down his right leg. Dr. Rieth noted that appellant had an MRI in 1993, which showed a herniated disc and stated that his current findings were compatible with compression of the 5<sup>th</sup> lumbar nerve root into the right lower extremity. He added it was possible to have a recurrent HNP at L4-5 on the right.

On January 25, 1995 appellant filed a notice of recurrence of disability beginning on January 22, 1995 and he stopped work. Appellant asserted that his back pain was attributable to the March 3, 1993 work injury.

In a January 31, 1995 authorization for examination or treatment, Dr. Rieth checked a box "yes" that he believed the condition was caused or aggravated by an employment activity. In the box regarding findings, he filled out "left sciatic scoliosis; muscle spasm, right leg pain." Dr. Rieth diagnosed recurrent HNP at L4-5.

In a February 17, 1995 report, Dr. Rieth indicated that he was asked by appellant to "drop a note in connection with his alleged injury" of March 3, 1993. He stated that his records reflected that appellant "did sustain an injury to his back when he was leaning over on the backside of his truck and attempted to pick up a tray or mail." He responded affirmatively to the question of whether an individual "could sustain a ruptured disc in his back from doing a simple act of bending over." He indicated that, "commonly individuals do sustain a ruptured disc from an inadvertent act when caught off guard rather than at a time when they 'gird their loins.'"

Dr. Rieth also stated that he initially saw appellant on March 4, 1993 regarding his injury of March 3, 1993 and that "appellant had obvious clinical findings of a nerve root impingement syndrome with sciatica and associated low back pain and muscle spasm." The MRI of March 22, 1993 showed that appellant sustained a small right paracentral disc herniation at the level of the L4-5 disc. "Such a phenomenon would be compatible with the patient's complaints and distribution of pain down his right lower extremity."

Dr. Rieth reexamined appellant on January 23, 1995 and noted that appellant was in acute distress with severe low back pain, marked muscle spasm and marked limitation of motion with a positive straight leg raising test on the right side. He noted this condition was precipitated by several severe episodes of coughing while in the throes of an upper respiratory infection. Dr. Rieth opined that appellant “obviously had a nerve root impingement syndrome and very ‘likely,’ a recurrence of the previously diagnosed protruded lumbar disc, which was diagnosed on March 22, 1993.”

In a June 26, 1995 decision, the Office found that the evidence failed to establish that the claimed medical condition or disability was causally related to the March 3, 1993 injury.

On June 30, 1995 appellant requested an oral hearing, which was held on May 8, 1996.

In a June 13, 1996 decision, the hearing representative found that appellant had not met his burden of proof because he had not provided a reasoned medical explanation that the recurrence of disability was due to the March 3, 1993 work injury rather than the coughing.

In a June 10, 1997 letter, appellant’s representative requested that the Office include appellant’s herniated disc as part of the accepted injury of March 3, 1993. He stated that he was not appealing the hearing representative’s June 13, 1996 decision, but only asking for a decision about the herniated disc.

By decision dated July 16, 1998, the Office denied appellant’s claim for compensation because the evidence of record failed to establish that the March 3, 1993 injury resulted in a herniated disc.

By letter dated August 12, 1998, appellant requested an oral hearing.

In a March 16, 1999 letter, appellant requested that the hearing set for March 26, 1999 be cancelled as he was requesting reconsideration instead.

In his March 15, 1999 report, Dr. Rieth stated that he had treated appellant since 1991 for lumbosacral disc disease. On March 4, 1993 he treated appellant for acute pain in the low back with radiation into both lower extremities, which occurred as a consequence of a work-related injury while attempting to pick up a tray of mail from his truck. Dr. Rieth noted that clinical examination revealed marked muscle spasm in appellant’s back and significant limitation of motion in all planes, as well as bilaterally positive straight leg raising signs and a pain coursing down both lower extremities. An MRI study on March 22, 1993 revealed a small right paracentral disc herniation at the level of the L4-5 disc. Dr. Rieth stated that his clinical observation of appellant prior to March 3, 1993 did not lead him to believe that he had a herniated disc then and concluded that “it appears” the incident of March 3, 1993 resulted in a protruded lumbar intervertebral disc causing appellant to have continued low back and lower extremity pain.

By letter dated April 19, 1999, appellant requested reconsideration of the July 16, 1998 hearing representative’s decision. In support of his request, appellant enclosed the March 15, 1999 report from Dr. Rieth and the MRI dated March 22, 1993.

By decision dated July 14, 1999, the Office denied modification of its July 16, 1998 decision because the medical evidence failed to establish that the claimed condition was related to the original employment injury.

The Board finds that appellant has not established that his herniated disc was causally related to the accepted 1993 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed condition of a herniated disc and the accepted March 3, 1993 work-related lumbosacral strain.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In this case, appellant's claim was accepted for lumbosacral strain on March 3, 1993. Appellant subsequently attempted to amend his claim to have his herniated disc accepted as part of his March 3, 1993 injury. Appellant was informed that he needed to submit a comprehensive medical report from his treating physician explaining how work factors or incidents in his employment caused or contributed to his claimed conditions. While the herniated disc is mentioned in some reports, none of the medical reports in the record provided a rationalized medical opinion explaining why particular work factors identified by appellant caused his claimed injury.

Dr. Rieth, in his March 4, 1993 report, stated that appellant had a preexisting lumbosacral disc disease which he "believed" had a service-connected disability. He did not explain or distinguish how appellant's preexisting disc disease was causally related to his federal employment. Dr. Rieth did not explain how the herniated disc could be related to the accepted employment injury as opposed to the preexisting injury.

In his January 23, 1995 treatment note, Dr. Rieth indicated it was "possible" to have a recurrent HNP. The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship.<sup>4</sup>

In the January 31, 1995 authorization for continuation of treatment, he checked the "yes" box regarding whether appellant's injury was caused or aggravated by an employment activity. However, checking of the "yes" box is insufficient without further explanation or rationale, to

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Arthur P. Vliet*, 31 ECAB 366 (1979).

establish causal relationship.<sup>5</sup> Dr. Rieth did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition.<sup>6</sup>

In his February 17, 1995 report, Dr. Rieth stated that "the question of course is could one sustain a ruptured disc in his back from doing a simple act of bending over and the answer of course is yes." However, this statement is of limited probative value because Dr. Rieth did not provide rationale fully explaining the medical processes by which bending over would have caused or aggravated a herniated disc.<sup>7</sup> He also did not distinguish how he determined it was due to the March 3, 1993 incident as opposed to previous incidents or to appellant's preexisting degenerative disc disease.

Dr. Rieth also stated that appellant "obviously had a nerve root impingement syndrome and 'very likely' a recurrence of the previously diagnosed protruded lumbar disc." He did not explain how the nerve root impingement syndrome was related to appellant's employment. Additionally his statement that the condition was "very likely" a recurrence was also speculative.<sup>8</sup>

In his March 15, 1999 report, Dr. Rieth opined that his clinical observation of appellant prior to March 3, 1993 did not lead him to believe that appellant had a herniated disc and concluded that "it 'appeared' that the March 3, 1993 incident resulted in a protruded lumbar intervertebral disc causing appellant to have continued low back and lower extremity pain." However, he did not provide any rationale to explain how appellant's employment could have caused or aggravated his condition.<sup>9</sup> Additionally, Dr. Rieth stated that the disc caused appellant to have continued low back and lower extremity pain but did not elaborate or attempt to provide a causal relationship between that condition, as distinguished from his previous injuries or his preexisting degenerative disc disease, and the factors of appellant's federal employment. Thus, Dr. Rieth did not offer a rationalized medical opinion explaining how appellant's employment caused or aggravated appellant's condition.<sup>10</sup>

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his

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<sup>5</sup> *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>6</sup> The opinion of the physician must be based upon 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. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> *Id.*

<sup>8</sup> The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

<sup>9</sup> *See William S. Wright*, 45 ECAB 498 (1993).

<sup>10</sup> *See supra* note 6.

employment.<sup>11</sup> To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of federal employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>12</sup> Appellant failed to submit such evidence and, therefore, failed to establish that his herniated disc was causally related to his March 3, 1993 employment injury.

The July 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 29, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>11</sup> *William S. Wright, supra* note 9.

<sup>12</sup> *Id.*