

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW F. WUNNING and U.S. POSTAL SERVICE,
POST OFFICE, Burnt Hills, NY

*Docket No. 00-570; Submitted on the Record;
Issued March 9, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to establish that he sustained a back condition causally related to factors of his employment.

On March 4, 1998 appellant, then a 47-year-old customer service supervisor, filed an occupational disease claim alleging that his back pain was caused or aggravated by bending for two to three hours while affixing labels to mailboxes during his employment. He indicated on the claim form that he initially became aware of his condition and related it to his federal employment in June 1997. Appellant stopped work on February 17, 1998 and returned on June 4, 1998.

To support his claim, appellant submitted progress notes dated July 25, 1997 to February 24, 1998 from Drs. George J. Giokas, Board-certified in internal medicine, Richard B. Toll, Board-certified in internal medicine, Robert J. Donohue, Jr., Board-certified in internal medicine and Gregory D. Riebel, a Board-certified orthopedic surgeon, stating appellant's complaints and treatment.

Dr. Toll's December 8, 1997 note stated that appellant's lower back pain was improved and highly intermittent. Dr. Donohue's January 9, 1998 note stated that appellant complained of one to two weeks of increasing back pain, which he characterized as a chronic problem since August 1997. Dr. Donohue noted that appellant stated that he could not recall any recent injury. Dr. Donohue's February 17, 1998 note stated that appellant complained of increasing lower back pain and difficulty sitting and standing. He noted his examination findings and diagnosed degenerative disc disease.

Dr. Riebel's February 24, 1998 note stated that appellant reported that he could not recall a specific incident that caused his lower back pain, "but it seemed to start" at work when he affixed labels to mailboxes while squatting and bending for three or four hours. Dr. Riebel noted

that appellant was unable to work and that he complained of constant pain. He diagnosed L4-5 and L5-S1 disc bulging and possible L5-S1 disc tear.

Appellant also submitted a March 19, 1998 form report from Dr. Riebel diagnosing a possible lumbar disc tear and stating that appellant could not perform postal duties.

Appellant further submitted a January 22, 1998 magnetic resonance imaging (MRI) report, in which Dr. Eric M. Wagle, a Board-certified diagnostic radiologist, diagnosed mild degenerative changes without evidence of disc herniation. Dr. Wagle found mild L3-4 disc space narrowing and desiccation, L4-5 mild to moderate disc desiccation and mild broad-based bulge and L5-S1 mild disc space narrowing and desiccation with minimal disc bulging and widely patent foramina. He also noted mildly increased sclerosis of the facets at L5-S1.

Additionally, appellant submitted progress notes dated August 1, 1997, in which Loretta C. Gillegen, a nurse practitioner, noted his symptoms and her examination findings.

Appellant also submitted a customer service supervisor job description and a Veterans Administration decision dated July 8, 1982, finding that his hypertension and nerve paralysis were service connected.

Appellant further submitted a narrative statement dated March 4, 1998, in which he alleged that during the summer of 1997 he labeled mailboxes for two to three hours. He also alleged that the labeling involved bending and resulted in soreness. Appellant described his subsequent medical treatment.

By letter dated May 5, 1998, the Office of Workers' Compensation Programs notified appellant that the evidence submitted to support his claim was insufficient and advised him of the factual and medical evidence necessary to establish his claim.

In response, appellant submitted a March 17, 1998 progress note, in which Dr. Donohue noted appellant's persistent back pain, treatment plan and his examination findings. In a brief report dated June 4, 1998, he noted that appellant stated that his back pain commenced after performing heavy lifting and bending while at work. Dr. Donohue stated that appellant's continued performance of such tasks may have exacerbated his back pain and opined that he would most likely need spinal surgery.

The employing establishment submitted a statement dated May 5, 1998, in which it described the alleged employment factors and noted that appellant stated that he pushed his girlfriend's car from a driveway because someone put sugar in its gas tank. The employing establishment also alleged that appellant stated that his hypertension caused back spasms.

By decision dated June 29, 1998, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that appellant's degenerative disc condition was causally related to factors of his employment. The Office found that Dr. Donohue's June 4, 1998 report stating that appellant's pain followed "heavy lifting and bending at work" conflicted with appellant's allegation that his back pain was caused by squatting and bending while

labeling mailboxes and, therefore, lacked probative value. The Office also found that affixing mailbox labels was not within appellant's job description.

By letter dated July 27, 1998, appellant requested an oral hearing before an Office hearing representative.

At the January 27, 1999 hearing, appellant testified that prior to June 1997 he did not have back pain. He also testified that over the course of 2 days he worked 2 to 3 hours labeling 960 mailboxes and that he bent 96 times to affix labels to the lower mailboxes. Appellant noted that he did not seek medical treatment for about two months because he assumed that he "just pulled a muscle" and he described his subsequent treatment. Appellant denied the employing establishment's allegation that he pushed his girlfriend's car out of a driveway in the fall of 1997.

Appellant submitted a January 8, 1998 report, in which Dr. Donohue diagnosed a degenerative disc condition with L4-5 disc bulging. He stated:

"It is my opinion that the physical activity required in the labeling of boxes as described by [appellant's] attached affidavit dated January 4, 1999 was, in fact, a component of the cause of his bulging disc at L4-5 which will require corrective surgery and continued treatment."

Appellant also submitted progress notes dated May 12 and June 1, 1998, in which Dr. Donohue noted appellant's subjective complaints and his examination findings. In his May 12, 1998 note, Dr. Donohue diagnosed degenerative disc disease and hypertension.

Appellant further submitted an affidavit dated January 4, 1999, in which he stated that on or about June 1, 1997 he bent over 96 times in order to place labels on 960 mailboxes for 2 to 3 hours for 2 consecutive days. He also stated that he experienced back pain following the completion of the labeling. Appellant discussed his medical treatment and noted that he had continuing back pain and spasm limiting his motion in all directions.

Additionally, appellant submitted the minimum job requirements for a customer service supervisor and two photographs of mail containers.

In response to appellant's January 27, 1999 testimony, the employing establishment submitted a statement dated February 25, 1999, discussing appellant's work labeling mailboxes and his history of back problems. The employing establishment also submitted four photographs of the mailboxes labeled by appellant.

By decision dated April 5, 1999, the Office hearing representative affirmed the Office's June 29, 1998 decision on the grounds that the evidence of record failed to establish that appellant sustained a back condition causally related to factors of his employment, as alleged.

The Board finds that appellant has not met his burden of proof to establish that he sustained a back condition causally related to factors of his employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In an occupational disease claim, it must be established that a condition was sustained in the performance of duty by submitting 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 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 the claimant.⁴

The medical evidence required to establish a causal relationship between the occupational disease or condition and the identified employment factors is, generally, rationalized medical opinion evidence.⁵ 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.⁶

In this case, the Office did not dispute that appellant sustained L4-5 disc bulging and degenerative condition, but found that the medical evidence of record was insufficient to show causal relationship to the employment factors.

The progress notes from Drs. Giokas, Toll, Donohue and Riebel dated July 25, 1997 to June 1, 1998 merely noted appellant's complaints, medical treatment and examination findings. Dr. Wagle's January 22, 1998 report diagnosed mild degenerative changes without evidence of disc herniation but did not contain a rationalized opinion addressing the issue of whether appellant's condition was causally related to the implicated employment factors. Similarly, Dr. Donohue's June 4, 1998 report failed to address causal relationship.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *see Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Id.*

⁶ *Thomas L. Hogan*, 47 ECAB 323, 329 (1996).

In his January 8, 1998 report, Dr. Donohue stated: “It is my opinion that the physical activity required in the labeling of boxes as described by [appellant’s] attached affidavit dated January 4, 1998 was, in fact, a component of the cause of his bulging disc at L4-5 which will require corrective surgery and continued treatment.” Dr. Donohue’s opinion, however, is of limited probative value because it does not contain sufficient medical rationale in support of his conclusion. Although Dr. Donohue concluded that appellant’s condition was causally related to factors of his federal employment, he did not sufficiently support his conclusion with a rationalized medical opinion.

As appellant has failed to submit rationalized medical opinion evidence relating his claimed condition to factors of his federal employment, he has not met his burden of proof to establish that he sustained L4-5 disc bulging and degenerative condition causally related to his federal employment.

The April 5, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 9, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member