

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORRAINE E. WESSON and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA

*Docket No.03-1325; Submitted on the Record;  
Issued July 18, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant established that she developed several conditions causally related to factors of her federal employment.

On January 27, 2003<sup>1</sup> appellant, then a 53-year-old mail processor, filed a claim for occupational disease alleging that she had a herniated disc at L5-S1, a condition at C2-3 and C4-5, painful knees, hips and legs and tendinitis of the hand and arm, with swelling, in the performance of duty. Appellant submitted medical evidence in support of her claim, as well as a written note dated January 29, 2003 informing her supervisor that she had been taken from work to the hospital, due to severe back pain and numbness in her feet and legs. There is no indication on the claim form that appellant stopped work.

In a letter dated February 3, 2003, the employing establishment informed the Office of Workers' Compensation Programs that appellant had a prior accepted claim, number 13-1201115, for a "lumbosacral sprain and degeneration of lumbar or lumbosacral intervertebral disc." The employing establishment noted that the two claims were for similar conditions and that following her initial claim, appellant's condition became permanent and stationary on October 14, 2002. The employing establishment stated that it was suggested to appellant that she file a claim for a recurrence of disability instead of a new occupational disease claim, but appellant declined stating that she now had pain in her arms and hands, which was not part of the original claim.

By letter dated February 13, 2003, the Office informed appellant of the type of evidence needed to support her claim. The Office asked her to submit a narrative statement setting forth the specific employment factors alleged to have caused her condition, as well as a

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<sup>1</sup> Appellant actually dated her claim form January 27, 2002. The Board notes that the other dates contained on the form and the signature by appellant's supervisor on January 31, 2003, indicate that appellant actually filed her claim on January 27, 2003.

comprehensive medical report from a physician. The Office left the record open for 30 days for the submission of such evidence.

In a decision dated April 1, 2003, the Office denied appellant's claim finding that she had neither provided the requested statement as to what work factors she felt caused her current condition, nor provided rationalized medical evidence establishing that she developed a medical condition as a result of these work factors.

The Board finds that, based on the record currently before the Board, appellant has not established that she developed neck, arm or hand conditions causally related to factors of her federal employment.

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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.<sup>3</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>4</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>6</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief of a claimant that the disease or condition was

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<sup>2</sup> *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(q), 10.5(ee) ("occupational disease" and "traumatic injury" defined).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>4</sup> *Leon Thomas*, 52 ECAB 202 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>7</sup>

In this case, the record before the Board contains only scant factual information regarding the aspects of appellant's employment she alleges led to the development of her neck, arm and hand conditions. Appellant did not specify any employment factors on her claim form and in her narrative response to the Office's request for additional information, appellant stated that a copy of the job activities she felt contributed to her condition would be faxed separately to the Office.<sup>8</sup> She did indicate that she had been in a sedentary position since 1999 and that she felt that lack of support while "sticking mail" intensified her back pain. By letter dated November 13, 2002, the Office requested that appellant submit both factual and medical evidence to establish that her employment duties resulted in an injury; however, at the time the Office issued its decision, the record still did not contain a statement of work events which she felt contributed to or aggravated her condition. Because the record is devoid of any factual evidence to establish that appellant's federal employment contributed to or aggravated her condition, the first prong of the fact-of-injury test has not been established. She has not met her burden of proof.<sup>9</sup>

The Board notes that even assuming that appellant had provided a statement of work events which she felt contributed to or aggravated her condition or that the lack of back support while sticking mail is a sufficient factor, she did not submit any rationalized medical evidence which establishes that she developed neck, arm or hand conditions due to her federal employment. In support of her claim, appellant submitted magnetic resonance imaging (MRI) scans of the cervical and lumbar spine dated October 30 and December 16, 2002, diagnosing interval progression of disc degeneration at L5-S1 and moderately severe central protrusion at C4-5 and minimal central protrusion at C2-3. In addition, the record contains the partially illegible results of a February 17, 2003 whole body bone scan, compatible with degenerative changes of the knees and toes and the results of a November 6, 2003 blood test which was negative for rheumatoid factor. However, as none of these reports contain any discussion as to the cause of the various conditions revealed by these tests, they are insufficient to support appellant's claim for an employment-related condition.<sup>10</sup> Appellant also submitted a January 6, 2003 report from Dr. Stuart M. Gold, her treating Board-certified orthopedic surgeon. He noted that appellant had been under his care for an extended period for a history of low back problems, right arm and wrist pain and bilateral knee pain and that her primary complaint was back, knee and hip pain. Dr. Gold noted that appellant's primary care physician had recently diagnosed her with polymyalgia rheumatica, which also caused problems with her back, neck and arms. He further noted that a recent lumbar MRI scan revealed a herniated disc at the L5-S1 level, more to the left than right but a central type of protrusion with displacement particularly of the left S1 nerve root. Dr. Gold stated that this would explain appellant's significant back, knee and leg

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<sup>7</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>8</sup> The Board notes that the record only contains the last page of appellant's narrative response to the Office's February 13, 2003 request for additional information.

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Franklin D. Haislah*, 52 ECAB 457 (2001).

discomfort, as well as her continued symptomatology. He noted that a recent cervical MRI scan was less impressive, with some degenerative changes noted at C4-5 as well as some mild changes noted at C2-3. Dr. Gold concluded that appellant's "current back condition occurred within the course of her duties with the [employing establishment]. The problem is significant to the point where she is unable to work and is temporarily, totally disabled." However, he did not offer any additional comments regarding appellant's neck, hand and arm complaints. Therefore, as Dr. Gold did not discuss appellant's neck, hand and arm complaints, beyond noting some degenerative changes on her cervical MRI scan and did not offer a rationalized opinion as to whether appellant suffered from these alleged conditions or their relationship, if any, to her employment, his report is insufficient to establish appellant's claim for employment-related neck, arm and hand conditions.<sup>11</sup> Finally, the record contains a medical report dated October 14, 2002, from Dr. William C. Boeck, a Board-certified orthopedic surgeon, who noted that he had performed a second opinion examination at the request of the Office relevant to appellant's claim number 13-1201115. He noted that he had reviewed the medical records and statement of accepted facts provided by the Office. Dr. Boeck stated that appellant had been referred to him in order to determine if she had sustained a permanent aggravation to her lumbar back degenerative disc disease as a result of her work duties. Following his examination of appellant, Dr. Boeck diagnosed severe degenerative disc disease, L5-S1 and herniated disc disease per MRI scans, L5-S1. With respect to the cause of appellant's condition, Dr. Boeck stated: "[t]he diagnosed condition is medically connected to the factors of employment as described in the [s]tatement of [a]ccepted [f]acts by direct cause. It would appear, initially, that this individual had a lumbosacral strain, but the earliest indications in the submitted records already establish the presence of the herniated nucleus pulposus and both of these conditions would, of course, be superimposed on the preexisting degenerative disc disease at L5-S1." Dr. Boeck further stated that "the conditions of [the] lumbar st[r]ain and herniated disc can be considered as aggravating the preexisting degenerative disc condition and this is permanent with material changes indicated by the x-rays and MRI [scan] showing the marked changes noted, with marked narrowing of the lumbosacral interspace." He concluded that appellant did not require more than conservative treatment, that she did not have any permanent functional loss of use of the lower extremities from his examination and that she could work 8 hours a day, with restrictions on walking and standing for more than 2 hours and pushing, pulling or lifting more than 20 pounds. As Dr. Boeck did not offer any opinion regarding appellant's alleged neck, hand and arm complaints, his report is insufficient to establish appellant's claim for these specific conditions.<sup>12</sup> As there is no other medical evidence contained in the record, appellant did not provide the necessary medical evidence to establish that employment factors caused injuries to her neck, hands and arms and the Office properly denied her claim with respect to these alleged conditions.

With respect to appellant's claim that she sustained an employment-related herniated disc at L5-S1, with associated leg symptoms; however, the Board finds that this case is not in posture for decision.

As noted above, in his report dated January 6, 2003, Dr. Gold diagnosed a herniated disc at L5-S1 and stated that this would also explain appellant's significant back, knee and leg

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<sup>11</sup> *Id.*

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

discomfort, as well as her continued symptomatology. He concluded that appellant's "current back condition occurred within the course of her duties with the [employing establishment]" and that she was temporarily totally disabled. In addition, Dr. Boeck clearly opined that the diagnosed conditions of severe degenerative disc disease, L5-S1 and herniated disc disease at L5-S1 are medically connected to the factors of employment by direct cause. He also stated that the conditions of lumbar strain and herniated disc can be considered as having permanently aggravated appellant's preexisting degenerative disc condition. Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. Although the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> While the report of Dr. Gold is insufficiently rationalized to carry appellant's burden of proof, in that he does not explain what aspects of appellant's job caused or contributed to her condition and while the report of Dr. Boeck, pertaining to claim number 13-1201115 appears to have been mistakenly associated with this file, Dr. Boeck's conclusions, taken together with the conclusions of Dr. Gold, pertaining to appellant's low back complaints, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>14</sup> Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

On remand the Office should double this case file assigned number 13-1201115 with any other injury claims appellant has filed for the same parts of the body.<sup>15</sup> Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a low back condition, with associated leg symptoms.

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<sup>13</sup> *Linda L. Newbrough*, 52 ECAB 323 (2001).

<sup>14</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *see John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Donald L. Morris*, 36 ECAB 140 (1984).

<sup>15</sup> FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.

The April 1, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed in part and set aside in part and the case is remanded for further development consistent with this decision.<sup>16</sup>

Dated, Washington, DC  
July 18, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>16</sup> The Board notes that together with her appeal, appellant submitted numerous medical reports as well as a narrative statement setting forth the job factors she felt contributed to her claim. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant should ensure that this evidence is forwarded to the Office and properly associated with her claim file.