

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

NORMA G. FORD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milan, IL, Employer**

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**Docket No. 05-407
Issued: June 6, 2005**

Appearances:
Norma G. Ford, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 6, 2004 appellant filed a timely appeal from the September 8, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for failure to establish causal relationship. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant's herniated nucleus pulposus at L5-S1 was causally related to her federal employment.

FACTUAL HISTORY

On September 26, 2002 appellant, then a 47-year-old mail handler, filed a claim for compensation alleging that her herniated disc at L4-5 was a result of her federal employment: "I had experienced sporadic pain in the lower back during the months of May through August [2001]. After August 20, [2001] I had constant and worsening back pain. I realized this was probably caused when I lifted about 25 to 30 tubs filled with newspapers and magazines."

On October 23, 2002 the Office requested that appellant submit additional evidence to support her claim, including a comprehensive report from her physician containing the physician's opinion, with medical reasons on the cause of her condition: "Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition an explanation of how such exposure contributed should be provided." The Office emphasized that this evidence was crucial to her claim.

In an October 24, 2002 attending physician's form report, Dr. Richard A. Roski, a neurosurgeon, related that appellant noticed pain at the beginning of April 2001, which improved after a three-week vacation and then recurred a week after returning to work at the end of July 2001. He indicated that there was no evidence of concurrent or preexisting injury or disease or physical impairment. A magnetic resonance imaging (MRI) scan on September 24, 2001 showed a large protruding disc at L5-S1 and a myelogram on March 13, 2002 showed a minimal extramural impression on the anterior thecal sac at L5-S1 with no filling of the right nerve root sleeve. Dr. Roski diagnosed lumbar herniated disc. With an affirmative mark, he indicated that this was caused or aggravated by an employment activity. "See notes," he explained. The injury required hospitalization for surgery, once on November 19, 2001 and again on May 21, 2002.

In a decision dated November 25, 2002, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that her herniated disc was the result of her employment as a mail handler.

On December 6, 2002 Dr. Roski addressed the issue of causal relationship:

"I first evaluated [appellant] on October 9, 2001. She presented with low back and right leg pain that she developed while at work. Discs herniated for a variety of reasons and since [appellant's] pain started at work, it is believed to be the cause. Due to the amount of pain she was experiencing, [appellant] chose to use her health insurance as payment to ensure the quickest treatment. She underwent a[n] L5-S1 discectomy on November 19, [20]01. After surgery, up to 10 percent of people will have recurrent problems at the same disc level. With that in mind, [appellant] reherniated her L5-S1 disc and underwent another surgery on May 21, 2002. If I can be of further help in this matter, please feel free to contact me."

On August 12, 2003 Dr. Roski wrote again:

"[Appellant] first saw me in the office for evaluation on October 9, [20]01. She first developed low back and right leg pain in April 2001. This subsided for a short period but then when [appellant] returned to her lifting, pushing and dragging work in mid July, she again started to experience pain in the back and radiating down the leg. On August 20, 2001 she experienced a sharp pain in her lower back while bending, lifting and turning at work. These are certainly maneuvers that place a great deal of stress on the lumbar spine. All of her back trouble appears to be related to the lifting part of her work."

“After evaluation of an MRI scan on September 24, [20]01, [appellant] was found to have a herniated lumbar disc at L5-S1. She has been through two surgeries related to the disc problem, the first on November 19, 2001 and the second on May 21, 2002.

“I have very little question that the maneuvers or work activities she performed are causally related to her developing her herniated lumbar disc. Specifically, the sharp pain she experienced on August 20, 2001 was from the disc herniation.”

In a decision dated September 12, 2003, an Office hearing representative affirmed the November 25, 2002 denial of appellant’s claim on the grounds that Dr. Roski’s reports were insufficient to establish causal relationship.

In a decision dated September 8, 2004, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

Neither the fact that a disease or condition manifests itself during a period of employment nor the claimant's belief that the condition was caused or aggravated by employment factors are sufficient to establish causal relationship.⁷

ANALYSIS

The Office denied appellant's claim for compensation on the grounds that the medical opinion evidence was insufficient to establish causal relationship. The Office did so, however, without making a finding on the prior question of whether she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The Office's failure to make a finding upon operative facts may allow the Board, on review, to find the operative facts implicitly resolved in the claimant's favor when such operative facts are precedent or preliminary facts to the finding upon which the rejection is based and such conclusion is supportable on the record.⁸

There is, at least on the surface, some dispute concerning the duties to which appellant attributes her low back condition. The hearing representative's September 12, 2003 decision described the matter in detail but did not resolve the issue. Appellant claimed that she noticed her low back condition while lifting about 25 to 30 tubs filled with newspapers and magazines. The employing establishment countered that she was working a permanent rehabilitation job at the time with a lifting restriction of 5 pounds frequently and 20 pounds on a very occasional basis due to a left arm condition. Appellant submitted witness statements supporting that she lifted, pushed and pulled heavy loads. The Board notes that, save for the maximum weight of hampers, the employing establishment did not contest that appellant actually performed the duties alleged but noted that heavy lifting, pushing and pulling were outside her rehabilitation job description, so that, if she performed such duties, she did so on her own and outside her restrictions. But any fault in this regard is not a bar to her claim for compensation.⁹

The Board finds that the record in this case, supports that, in March 2001, appellant helped throw mail and magazines onto a conveyor belt and into hampers. She pushed or pulled full hampers, which have a maximum weight of 800 pounds, about 20 to 50 feet. Appellant pulled down full mailbags from their hooks and dragged them to their designated cages. She performed these duties two to three days a week, sometimes four and a half to eight hours a day. On August 20, 2001 she lifted about 20 tubs of magazines and newspapers weighing perhaps 40 pounds from cart to floor in about two hours' time. Appellant felt a sharp, stabbing pain in her low back but continued to work. The pain became worse over time as she continued to work and spread down to her right leg and into her foot.

The question for determination is whether these employment activities caused or aggravated a herniated lumbar disc. Appellant submitted medical opinion evidence that supports her claim, but this evidence is insufficient to discharge her burden of proof. A large part of the

⁷ See *Richael O'Brien*, 53 ECAB 234 (2001).

⁸ *Arietta K. Cooper*, 5 ECAB 11 (1952).

⁹ *Edith F. Bolet*, 6 ECAB 245 (1954).

problem with the opinion given by Dr. Roski, the attending neurosurgeon, is that he did not demonstrate a fair understanding of the implicated employment activities. He described her work simply as “lifting, pushing and dragging work” and noted that she experienced a sharp pain in her low back while bending, lifting and turning at work on August 20, 2001. This description of appellant’s work is too vague and superficial to permit a finding that Dr. Roski grounded his opinion on a proper factual history. Without a more detailed account of what she lifted, what appellant pushed, what she pulled and how much it weighed, his opinion on causal relationship is of diminished probative or evidentiary value.¹⁰

Dr. Roski’s opinion also suffers because he did not offer much in the way of medical reasoning. Dr. Roski initially related the herniated disc to employment for temporal reasons: “since her pain started at work, it is believed to be the cause.” But while a temporal relationship may be necessary, it alone is insufficient to establish causal relationship. As noted, the mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.¹¹ The Board has held that when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.¹² Dr. Roski later noted that maneuvers such as bending, lifting and turning place a great deal of stress on the lumbar spine, implying that such movements, as generally described, are sufficient to herniate a disc. But he also stated that discs herniate for a variety of reasons and made no attempt to discuss these other reasons or rule them out. In addition, Dr. Roski did not make clear whether the established employment activities precipitated the herniation or aggravated a previously asymptomatic condition and if the latter, whether the aggravation was temporary or permanent. He offered no details about what appellant actually did at work and his stated conclusion on causal relationship is of limited probative value. Without a full discussion of how specific employment activities either caused or aggravated appellant’s diagnosed L5-S1 herniated disc and of the evidence upon which he based his opinion, Dr. Roski’s opinion is of diminished probative value.¹³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her herniated nucleus pulposus at the L5-S1 level was causally related to her federal employment.

¹⁰ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician’s report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹¹ *Steven R. Piper*, 39 ECAB 312 (1987). An employee may suffer a heart attack at work, for example, but this does not in itself imply that work caused or contributed to the attack. Mere temporal relationships are thus, distinguished from relationships of causation or contribution.

¹² *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹³ See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member