

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

PERFECTO H. LAZARO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 05-651
Issued: June 15, 2005**

Appearances:
Perfecto H. Lazaro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 24, 2005 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated October 20, 2004, finding that he failed to establish that his back condition was causally related to employment factors. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

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

FACTUAL HISTORY

On August 10, 2004 appellant, a 51-year-old mailhandler/equipment operator filed an occupational disease claim alleging that on August 24, 2002 he first realized his back condition was employment related. He attributed his low back pain and left groin pain, left leg pain and tingling of the left toes and foot to his employment duties of loading and unloading mail from trucks. Appellant stopped work in October 2003 and did not return.

In support of his claim, appellant submitted a November 18, 2002 hand-written report by Dr. Edgardo M. Capitulo, a treating physician, regarding an umbilical hernia; progress notes for the period August 24, 2002 through May 8, 2004, by Dr. Teresita E. Tan, a treating physician, addressing appellant's back pain and treatment; a December 9, 2003 report by Dr. John C. Chin, a Board-certified neurological surgeon; an August 20, 2002 x-ray interpretation; laboratory results dated September 5, 2002; a November 5, 2003 computerized tomography (CT) scan; and magnetic resonance imaging (MRI) scans dated December 9, 2003.

On December 9, 2003 Dr. Chin diagnosed post-traumatic lower extremity thoracic strain/disc disease with radiculopathy, post-traumatic lumbar disc herniation with radiculopathy and history of employment-related umbilical hernia. He opined that appellant's injuries were due to his employment and that appellant was disabled since October 30, 2003. Regarding his employment duties, Dr. Chin reported:

“[Appellant's] duties include loading and unloading mail from trucks, repeated bending, stooping and twisting, carrying mailbags, sweeping sacks of mail, hooking and pulling equipment (APCs, OTR, hampters) full of mail, dispatching mail and pulling incoming mail from the dock.”

Dr. Chin noted that in August 2002, appellant noticed a gradually increasing low back pain precipitated and aggravated by his work duties. Dr. Chin stated “[b]ending, lifting and spinal movement continued to aggravate his symptoms besides prolonged sitting, standing and walking.” A December 9, 2003 MRI scan revealed a disc herniation at L4-5.

By letter dated August 20, 2004, the Office advised appellant that additional information was necessary to make a determination of his claim. The Office noted the type of factual and medical evidence needed to establish his claim.

Appellant submitted a September 10, 2004 statement and a September 14, 2004 work capacity evaluation (Form OWCP-5c) from Dr. Tan indicating that he was disabled from his job due to a herniated disc and low severe back pain. Appellant also submitted an August 23, 2004 acceptance of a temporary limited-duty job offer and disability note from Dr. Tan indicating he could return to work on August 18, 2004.

By decision dated October 20, 2004, the Office found that appellant performed the employment duties as described. However, the Office found the medical evidence insufficient to establish that he sustained a back condition caused by the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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

¹ 5 U.S.C. §§ 8101-8193.

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 the 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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, must be one of 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of casual relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵

ANALYSIS

In the instant case, the Office accepted that appellant was engaged in loading and unloading mail from a truck. However, the Office found the medical evidence insufficient to establish that he sustained a condition caused by the accepted employment factors.

The Board finds that the medical evidence submitted by appellant does not offer any opinion with respect to the causal relationship of his back condition to the work factors accepted in this case. The Board has held that medical evidence which does not offer any opinion

² *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Luis M. Villanueva*, 54 ECAB ____ (Docket No. 03-977, issued July 1, 2003); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁴ *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003); *Dennis M. Mascarenas*, *supra* note 3.

⁵ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Nicolette R. Kelstrom*, 54 ECAB ____ (Docket No. 03-275, issued May 14, 2003).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ Moreover, the reports of Dr. Capitulo is not relevant to appellant's claim of an employment-related back condition.

The diagnostic studies, include an August 20, 2002 x-ray interpretation, laboratory results dated September 5, 2002, a November 5, 2003 CT scan and MRI scans dated December 9, 2003. These reports do not offer any opinion with respect to causal relationship or regarding appellant's ability to work.

In a December 9, 2003 report, Dr. Chin diagnosed post-traumatic lower extremity thoracic strain/disc disease with radiculopathy, post-traumatic lumbar disc herniation with radiculopathy and history of employment-related umbilical hernia. He opined that appellant's injuries were due to his employment and that he had been disabled since October 30, 2003. Dr. Chin stated "[b]ending, lifting and spinal movement continued to aggravate his symptoms besides prolonged sitting, standing and walking." He did not explain how the accepted work activities caused or aggravated the diagnosed post-traumatic lower extremity thoracic strain/disc disease with radiculopathy, post-traumatic lumbar disc herniation with radiculopathy. Dr. Chin did not provide a full history to explain the nature of any prior trauma to appellant's back. He did not explain how the duties appellant performed would aggravate or contribute to the disc disease and herniation diagnosed. As Dr. Chin failed to provide a well-rationalized opinion to establish causal relationship, his report is not sufficient to establish appellant's burden of proof.⁷

The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how his employment duties caused or aggravated his back condition.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his back condition was causally related to factors of his employment.

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2004 is affirmed.

Issued: June 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member