

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN A. HEARD and U.S. POSTAL SERVICE,  
HIGHLAND PARK POST OFFICE, Chattanooga, TN

*Docket No. 02-83; Submitted on the Record;  
Issued April 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

Appellant, a 51-year-old manager, filed a notice of traumatic injury on July 3, 2000 alleging that he sustained low back pain, pain in the left leg and numbness in the left foot due to a twisting and lifting injury in the performance of duty on April 12, 2000.<sup>1</sup> By decision dated October 31, 2000, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to submit sufficient medical opinion evidence to meet his burden of proof.<sup>2</sup>

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be

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<sup>1</sup> Appellant initially filed a notice of recurrence of disability on May 24, 2000 attributing his current condition to a July 15, 1991 employment injury. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995). As appellant sustained an employment incident on April 12, 2000 the Office developed his claim as a new injury.

<sup>2</sup> Following the Office's October 31, 2000 decision, appellant submitted additional new evidence to the Office. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

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 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 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.<sup>5</sup>

In this case, the Office accepted that the employment incident occurred as alleged, that appellant was unloading mail, that a bucket became hung and that appellant was forced to twist while holding the bucket to catch falling mail

Appellant has failed to submit sufficient medical evidence to establish a causal relationship between his current diagnosed conditions and his accepted employment incident. He submitted a report dated April 14, 2000 from Dr. Jack Kennedy, who indicated that appellant had back and leg pain as well as left foot numbness for three days. He did not provide a history of injury or a diagnosis.

On May 9, 2000 Dr. H. Barrett Heywood, a Board-certified orthopedic surgeon, noted appellant's complaints of low back pain and radicular pain and numbness into the left leg and foot. He diagnosed spondylolisthesis with left radicular pain based on x-rays. Dr. Heywood did not provide a history of employment -injury nor did he provide an opinion that appellant's condition was causally related to his employment. He examined appellant on May 16, June 5 and August 1, 2000. These reports also fail to address appellant's history of injury.

In a report dated August 7, 2000, Dr. Todd C. Bonvallet, an orthopedic surgeon, noted that appellant had a previous back injury in 1991. He stated: "[Appellant] had a reaggravation injury in late April this year causing exacerbation of his left low back pain, as well as some new mid and right sided back pain of the lumbosacral spine and new onset of posterior buttock, thigh and calf pain on the left side." Dr. Bonvallet diagnosed vertebrogenic low back pain secondary to spondylolisthesis, spondylolysis at L5-S1 with foraminal stenosis at this level causing sciatica. He did not specifically address appellant's employment incident on April 12, 2000 and did not provide any opinion on the causal relationship between appellant's employment injury and his diagnosed condition.

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<sup>4</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>5</sup> *James Mack*, 43 ECAB 321 (1991).

As appellant has failed to submit any medical evidence noting his history of injury on April 12, 2000 and providing an opinion that his diagnosed back condition was caused or aggravated by this injury, he has failed to meet his burden of proof and the Office properly denied his claim.

The October 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 22, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member