

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

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**A.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Stone Mountain, GA, Employer**

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**Docket No. 07-141  
Issued: March 27, 2007**

*Appearances:*  
*Adam Conti, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 19, 2006 appellant filed a timely appeal of a July 13, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established an injury in the performance of duty on November 24, 2004.

**FACTUAL HISTORY**

On December 1, 2004 appellant, then a 77-year-old window clerk, filed a traumatic injury claim (Form CA-1), alleging that she sustained an injury to her lower left stomach and left thigh on November 24, 2004. She indicated that she was pulling POS (point of service) closed and she had a sharp pain. An employing establishment supervisor controverted the claim in a December 13, 2004 memorandum, alleging that appellant initially reported the injury as occurring on November 22, 2004.

By decision dated February 3, 2005, the Office denied the claim for compensation. The Office accepted that the November 24, 2004 incident occurred as alleged, but found that there was no probative medical evidence of record.

Appellant requested reconsideration and submitted additional evidence. In a treatment note dated January 6, 2005, Dr. Robert Bachner indicated that appellant complained of bilateral knee pain. He stated that appellant contused the left knee several weeks earlier. In a report dated January 11, 2005, Dr. Gary Ludi diagnosed left inguinal hernia. He stated that approximately a month earlier appellant had been moving a heavy door and felt a pop on her left side. On January 17, 2005 appellant underwent surgery for a left inguinal hernia.

In a decision dated June 1, 2005, the Office reviewed the case on its merits and denied the claim for compensation.<sup>1</sup>

Appellant again requested reconsideration and submitted a December 8, 2005 report from Dr. Ludi, who noted that appellant underwent surgery and stated that she could not return to work until February 4, 2005. Appellant had a left inguinal hernia “that she had acquired from her work and thus, the time that she was off work was due to her work injury.” In a report dated February 3, 2006, Dr. Robert Herrera, an internist, stated that appellant contacted his office on December 6, 2004 with complaints of pain in the left abdominal area. He stated that she thought this occurred after pulling and closing a heavy door at work.

In a decision dated July 13, 2006, the Office reviewed the case on its merits and denied modification of the June 1, 2005 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>3</sup> 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>4</sup>

The Office’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.<sup>5</sup> In clear-cut

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<sup>1</sup> The Office stated that appellant had established fact of injury but failed to establish causal relationship.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

<sup>4</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>6</sup>

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and 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 the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained an injury to her left side on November 24, 2004.<sup>8</sup> The Office did not dispute that the incident occurred as alleged. The issue is whether there is medical evidence on causal relationship between a diagnosed condition and the employment incident.

To meet her burden of proof, appellant must submit rationalized medical evidence. This is not a situation with an injury that can be identified on visual inspection or a clear-cut traumatic injury requiring only an affirmative statement. The medical evidence in this case does not contain a rationalized medical opinion. Dr. Ludi noted in a January 11, 2005 report that appellant felt a pop while attempting to close a heavy door without providing an opinion on causal relationship. In a December 8, 2005 report, he diagnosed a left inguinal hernia "acquired from her work" without providing a complete history of the incident or supporting the opinion with medical rationale. Dr. Herrera did not provide an opinion on causal relationship. He merely noted that appellant experienced pain that she thought occurred after pulling a heavy door at work.

The Board finds the medical evidence is not sufficient to establish an injury in the performance of duty on November 24, 2004. There is no medical report with a rationalized medical opinion based on a complete factual and medical history. Accordingly, the Board finds that appellant did not meet her burden of proof in this case.

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<sup>6</sup> *Id.*

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>8</sup> The Office stated in its June 1, 2005 decision that appellant had established fact of injury. This appears to be a finding that she submitted evidence of a diagnosed condition. It is well established that "fact of injury" requires that appellant submit sufficient evidence to establish an injury in the performance of duty. See *Caroline Thomas*, 51 ECAB 451 (2000). It is evident in this case that the Office did not accept that appellant sustained a diagnosed condition causally related to a November 24, 2004 incident.

**CONCLUSION**

Appellant did not submit sufficient evidence to establish an injury in the performance of duty on November 24, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2006 is affirmed.

Issued: March 27, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board