

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

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**E.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tampa, FL, Employer**

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**Docket No. 08-2267  
Issued: May 19, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 18, 2008 appellant, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 5, 2008. 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 met his burden of proof in establishing that he developed medical conditions of the back, hips, legs, feet, arms, hands and neck as a result of his accepted employment duties.

**FACTUAL HISTORY**

On June 15, 2006 appellant, then a 69-year-old mail processing clerk, filed an occupational disease claim alleging that his back, hips, legs, feet, neck, shoulders, arms and hands had deteriorated due to factors of his federal employment. He noted that he previously filed a claim for work-related injuries on February 23, 2003 and that his physician believed his condition had worsened. Appellant submitted a December 18, 2003 statement describing his

employment duties of moving heavy equipment, keying mail, sorting mail while standing for seven hours a day. The employing establishment noted that appellant's claim had previously been accepted for synovitis and impingement of both shoulders and aggravation of cervical spondylosis.

In support of his claim, appellant submitted a report dated May 17, 2006 from Dr. David P. Kalin, a family practitioner, diagnosing spondylosis at C6-7, degenerative arthritis of the cervical spine, moderately severe spinal stenosis L4-5, Grade 1 spondylolisthesis L4 and L5, adhesive capsulitis of both shoulders and diabetes mellitus.

The Office requested additional information by letter dated July 12, 2006. It requested that appellant provide additional information regarding his claim for injury to his back, hips, legs, feet, arms and hands and allowed 30 days for a response. Appellant submitted a report dated June 8, 2006 from, a chiropractor, Dr. George M. Naruns.

Dr. Edward N. Feldman, an orthopedist, completed a report on December 23, 2003 and diagnosed cervical radiculopathy, greater occipital neuralgia, synovitis and impingement of both shoulders and cervical spondylosis. He stated that appellant's conditions were causally related to and aggravated by his work activities.

In reports dated February 28, April 19 and May 30, 2007, Dr. Kalin stated that appellant's symptoms remained the same and diagnosed chronic cervicothoracic musculoskeletal ligamentous strain with paraspinal myofasciitis and spondylosis C6-7, chronic lumbosacral musculoskeletal ligamentous strain, chronic shoulder pain, lumbar radiculopathy and diabetes. He stated that appellant's work duties over a prolonged period of 10 years contributed to his neurologic and circulatory dysfunction of the upper and lower extremities.

In a letter dated September 28, 2007, the Office requested additional factual and medical evidence from appellant and allowed 30 days for a response. Appellant submitted a report from Dr. Kalin dated January 9, 2008 repeating the findings and conclusions of his earlier reports.

By decision dated August 5, 2008, the Office denied appellant's claim findings that Dr. Kalin's report were not sufficient to establish appellant's claim for conditions of the back, hip, leg, feet, arms and hands due to his employment duties.

### **LEGAL PRECEDENT**

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 a 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>1</sup>

### **ANALYSIS**

Appellant has alleged that he developed conditions of his back, hips, legs, feet, neck, shoulders, arms and hands due to his employment duties. The Office has previously accepted the conditions of synovitis and impingement of both shoulders and aggravation of cervical spondylosis under a separate claim. In this case, the Office found that appellant had not submitted sufficient medical evidence to establish a connection between his alleged conditions and his employment duties.

Appellant submitted a series of reports from Dr. Kalin, a family practitioner, providing various diagnoses and attributing appellant's upper and lower extremity conditions to his employment duties. While Dr. Kalin provided an opinion that appellant's conditions were due to his employment, he did not provide a clear diagnosis of a hand, arm, feet or hip condition due to appellant's specific employment duties. He also failed to provide a detailed description with medical reasoning explaining how appellant's employment duties resulted in the diagnosed chronic cervicothoracic musculoskeletal ligamentous strain with paraspinal myofasciitis and spondylosis C6-7, chronic lumbosacral musculoskeletal ligamentous strain, chronic shoulder pain, lumbar radiculopathy and diabetes. Due to these deficiencies, Dr. Kalin's reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted a December 2003 report from Dr. Feldman, an orthopedist, diagnosing cervical radiculopathy, greater occipital neuralgia, synovitis and impingement of both shoulders and cervical spondylosis. Dr. Feldman stated that appellant's conditions were causally related to and aggravated by his work activities. This report is not sufficient to meet appellant's burden of proof as it does not address the alleged upper and lower extremity or back conditions. Furthermore, he also fails to provide any medical reasoning explaining how appellant's employment duties caused or aggravated his diagnosed conditions.<sup>2</sup>

### **CONCLUSION**

The Board finds that appellant failed to provide the necessary rationalized medical opinion evidence to meet his burden of proof.

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<sup>1</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>2</sup> Section 8101(2) of the Federal Employees' Compensation Act provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). Since Dr. Naruns did not diagnose a subluxation, he is not a physician for the purposes of the Act and his report does not constitute medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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