

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 12-42
Issued: May 25, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 11, 2011 appellant filed a timely appeal from the July 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met his burden of proof to establish a back or hip condition as a result of his employment.

FACTUAL HISTORY

On April 13, 2011 appellant, then a 43-year-old city carrier, filed an occupational disease claim alleging that his back and hip condition occurred as a result of delivering packages weighing over 50 pounds. He indicated that he first realized on February 27, 2011 that his

¹ 5 U.S.C. § 8101 *et seq.*

condition was caused or aggravated by his employment. Appellant also stated that he reported his injury on February 25, 2011. No evidence was submitted in support of his claim.

In an April 29, 2011 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence, including a comprehensive medical report from his treating physician explaining how and why the incidents in his employment caused or contributed to his medical condition. Appellant was provided 30 days to submit the requested information.

In a May 27, 2011 statement, appellant indicated that his lower back pain developed while hand delivering heavy boxes weighing 50 to 60 pounds to a certain resident for several weeks during the month of February 2011. He indicated that he was seen by a physician on March 1, 2011.

Back to work letters from Dr. Douglas B. Szeto, a Board-certified family practitioner, from March 1 to April 11, 2011 were received along with a copy of a March 14, 2011 After Visit Summary. In a March 14, 2011 letter, Dr. Szeto stated that appellant has lower back and hip pain related to a work-related lifting injury. He requested that appellant be excused from work the rest of the week and to resume duties only he could tolerate upon return. In an April 21, 2011 letter, Dr. Szeto indicated that appellant was seen for back pain due to a work-related injury. He restricted appellant to light duty until May 5, 2011. In a May 5, 2011 letter, Dr. Szeto indicated that appellant was initially seen on March 1, 2011 for a work-related injury with back pain and hip pain. He released appellant to light duty on May 9, 2011. In an April 11, 2011 letter, Dr. Szeto stated that appellant may return to work April 18, 2011.

By decision dated July 21, 2011, OWCP denied appellant's claim on the grounds that fact of injury was not established. It noted that he failed to establish that he sustained an injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event,

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

incident or exposure caused an injury.⁵ Once he establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation, is causally related to the accepted injury.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁷

ANALYSIS

The Board finds that appellant failed to establish that he sustained a back or hip condition in the performance of duty as a city carrier.

Appellant alleged that he sustained back and hip pain from his duties as a city carrier. He must establish all of the elements of his claim in order to prevail. Appellant must prove his employment, time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty.

The Board finds that appellant has provided sufficient detail to establish that an occupational exposure occurred as alleged.⁸ In his May 27, 2011 statement, appellant indicated that his lower back pain developed while hand delivering heavy boxes weighing 50 to 60 pounds to a certain resident for several weeks during the month of February 2011. This information has not been specifically controverted by the employing establishment and is within the realm of his duties as a city carrier. Thus, it is established as factual that appellant engaged in heavy lifting during the month of February 2011 while in the performance of his duties.

Appellant however did not submit sufficient medical evidence to establish his claim. Dr. Szeto stated that appellant has lower back and hip pain related to a work-related lifting injury. He does not provide a firm diagnosis. Pain is a symptom, not a compensable diagnosis.⁹ Additionally, Dr. Szeto does not provide an adequate explanation of the activities performed during employment which might have caused a back or hip injury. He failed to describe a

⁵ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *I.J.*, 59 ECAB 408 (2008).

⁸ It is not clear if OWCP accepted that an occupational exposure occurred as alleged.

⁹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

mechanism of injury other than generally stating it was caused by lifting. No other medical evidence was submitted.

While the factual element of appellant's claim is established, the record lacks rationalized medical evidence to establish an injury causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence establishing the alleged occupational injury claim, OWCP properly denied his claim.

On appeal, appellant contended that he had submitted the requested documentation to support that a work-related injury had occurred. As discussed above, while he established the factual element of his claim, the medical evidence fails to diagnose a specific medical condition and explain how delivering packages at work caused such condition. A firm diagnosis of the injury is necessary not only to support the element of fact of injury, it will allow OWCP to accept a specific medical condition and authorize appropriate medical treatment.¹⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a medical condition in the performance of duty as a city carrier.

¹⁰ On appeal, appellant submitted new evidence. The Board cannot consider evidence that was not before OWCP at the time of the final decision. See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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