

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

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**WILLIAM C. GUTHRIE, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Montgomery, AL, Employer**

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**Docket No. 05-1059  
Issued: October 20, 2005**

*Appearances:*  
*William C. Guthrie, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 11, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 22, 2005 which denied modification of a November 18, 2004 decision, which found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on September 30, 2004.

**FACTUAL HISTORY**

On October 1, 2004 appellant, then a 51-year-old mail processor/automation clerk, filed a traumatic injury claim alleging that, on September 30, 2004, he was lifting trays into a postal

container when he sustained a hernia in the performance of duty.<sup>1</sup> Appellant did not initially stop work. The employing establishment controverted the claim.<sup>2</sup>

In support of his claim, appellant submitted an October 1, 2004 disability slip from Dr. George J. Kiricenkoy, a Board-certified family practitioner. He indicated that appellant could not lift over 10 pounds. He also submitted a report from a physician, whose signature is illegible, which contained a diagnosis of inguinal hernia.

By letter dated October 18, 2004, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion on causal relationship was crucial to his claim and allotted appellant 30 days to submit the requested information.

In an October 22, 2004 response, appellant described the events leading to his injury as occurring on September 30, 2004 while pulling trays of mail and putting them into a postal container when he felt a pain in his left abdomen. Appellant alleged that the pain did not initially appear to be bad; however, it worsened and became a large knot with swelling in his abdomen. He explained that, after he saw the physician, it was determined that he had a hernia which required surgery.

By decision dated November 18, 2004, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was sufficient to show that the claimed event occurred as alleged. The Office also found that there was no medical evidence supporting that the employment incident caused a diagnosed condition.

Appellant requested reconsideration on December 19, 2004. He alleged that, when he asked his supervisor if he could get a hernia from lifting heavy trays, his supervisor informed him that it was possible, but when he asked him to write a statement, his supervisor declined. Appellant reiterated that he hurt himself while putting the trays into the postal containers. He submitted a witness statement from Beula Boykin, an automation clerk, who confirmed that appellant pulled a muscle on September 30, 2004.

In an October 5, 2004 report, Dr. Brian R. Whyte, a Board-certified surgeon, advised that appellant was doing some "pushing and pulling at work" when he felt a lump. He diagnosed a left inguinal hernia and recommended a repair. In a November 18, 2004 disability certificate, Dr. Whyte advised that appellant could not lift anything over 10 pounds from November 21 to 26, 2004.

The record reflects that appellant accepted a limited-duty assignment comprised of no use of the left arm on December 12, 2004.

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<sup>1</sup> On the claim form, appellant filled in September 30, 2003; however, he informed the Office that the date was mistakenly put in as 2003, when it was actually 2004.

<sup>2</sup> The record reflects that appellant has a prior accepted claim for a left shoulder injury under claim No. 062122075.

The Office received numerous physical therapy reports, an operative report and an impairment rating related to treatment of appellant's shoulder from December 8, 2004 to February 21, 2005 and additional disability certificates.

By letter dated January 13, 2005, the Office requested that the employing establishment respond to appellant's request for reconsideration. In a January 24, 2005 response, the employing establishment again controverted the claim.

By letter dated February 14, 2005, the Office advised appellant of the employing establishment's response. The Office received a response from appellant on February 24, 2005. He repeated that his description of the alleged injury was accurate.

By decision dated March 22, 2005, the Office denied modification of its November 18, 2004 decision. The Office found that appellant had not provided sufficient evidence to support that he sustained a diagnosed medical condition as a result of a specific work incident on September 30, 2004.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act<sup>4</sup> and that an injury was sustained in the performance of duty.<sup>5</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

## ANALYSIS

Appellant alleged that he sustained a hernia while lifting trays into a postal container at work on September 30, 2004. The Office accepted that he lifted a heavy tray from a postal container at work. The Board finds that the first component of fact of injury, the claimed incident -- lifting trays into a postal container, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the lifting of trays at work caused a personal injury on September 30, 2004. The medical evidence contains no reasoned explanation of how the specific employment incident on September 30, 2004 caused or aggravated an injury.<sup>9</sup>

The only relevant report provided by appellant was the October 5, 2004 report of Dr. Whyte, who also diagnosed an inguinal hernia and noted appellant's belief that he was doing some pushing and pulling at work when he felt a lump, which became enlarged. However, Dr. Whyte did not indicate when the lifting incident occurred, what or how much appellant lifted, or how the actual lifting caused or contributed to the diagnosed hernia. Since this report does not include a complete and accurate history of injury relating appellant's lifting incident to his hernia, it is of diminished probative value. Without any reasoning to support the stated conclusion, this report is insufficient to meet appellant's burden of proof.<sup>10</sup> The other reports submitted by appellant do not address the issue of causal relationship.

The record also contains several physical therapy reports<sup>11</sup> and operative reports related to his shoulder condition. However, those reports are not relevant to his claim for an inguinal hernia on September 30, 2004.

Because the medical reports submitted by appellant do not address how the September 30, 2004 lifting incident caused or aggravated an inguinal hernia, these reports are of limited probative value<sup>12</sup> and are insufficient to establish that the September 30, 2004 employment incident caused or aggravated a specific injury.

## CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>10</sup> *Id.*

<sup>11</sup> Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jan A. White*, 34 ECAB 515, 518 (1983).

<sup>12</sup> See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2005 and November 18, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 20, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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