

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

I.F., Appellant

and

**U.S. POSTAL SERVICE, MANASOTA
PROCESSING & DISTRIBUTION FACILITY,
Sarasota, FL, Employer**

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**Docket No. 06-1519
Issued: October 19, 2006**

Appearances:
William Hackney, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2006 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated August 12, 2005 and May 30, 2006 denying his claim of injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on January 4, 2005 in the performance of duty.

FACTUAL HISTORY

On January 4, 2005 appellant, then a 43-year-old mail handler, filed a traumatic injury claim alleging that on that date he injured his lower back, left buttock and left leg while pulling a cage from the dumper. He submitted records from Lakewood Ranch Medical Center including an unsigned report indicating that he was treated on January 4, 2005 for acute back pain. In a

January 4, 2005 report, Dr. Blake Zika, an osteopath, noted the onset of back pain commencing that date. He described a sharp pain that was similar to previous episodes. Dr. Zika listed impressions of acute back pain and possible herniated disc. In another note dated January 4, 2005, Dr. Joe Balen stated: "Due to increase in post surgical back pain, it is recommended that [appellant] be excused from his work duties [January 4, 2005]. He will be reevaluated on his next office visit." A January 4, 2005 duty status report containing an illegible signature placed restrictions on appellant's return to work. Dr. Balen noted that appellant had acute back pain and stated that the injury occurred while "pulling a cage out of a dumper." An attending physician's report dated January 4, 2005 containing an illegible signature diagnosed back pain and noted that appellant provided a history of "lifting boxes."

In a medical report dated March 31, 2005, Dr. David P. Kalin, a general practitioner, indicated that appellant's condition was unchanged since his initial assessment of January 10, 2004. He reviewed the reports of Dr. Kevin Boyer, a Board-certified orthopedic surgeon, who indicated that appellant had a left-sided L5-S1 herniated nucleus pulposus for which surgery was performed in 2004. Dr. Kalin listed his assessment, as follows:

(1) Post-traumatic exacerbation chronic low back syndrome, work-related [employing establishment] injury January 4, 2005.

(2) Status post L5-S1 lumbar decompression left-sided L5-S1 microdiscectomy, June 7, 2004, with L5-S1 focal left paracentral disc herniation and an extruded disc fragment extending inferiorly, lying in the left lateral recess, measuring [nine millimeters] in greatest dimension and most likely impinging on the left S1 nerve root; L4-5 generalized disc bulge with central protrusion without significant canal foraminal stenosis and with active L5 radiculopathy and subtle indications of left S1 root injury. [Electromyogram December 13, 2004], work-related [employing establishment] injury February 26, 2004.

By letter dated July 11, 2005, the Office requested that appellant submit further information. Appellant did not submit a timely response.

By decision dated August 12, 2005, the Office denied appellant's claim. It found that, although the evidence supported that the claimed incident occurred, the medical evidence did not establish an injury.

By letter dated August 23, 2005, appellant requested an oral hearing and submitted an attending physician's report dated January 4, 2005, by Dr. H. Gerard Siek, Jr., a Board-certified orthopedic surgeon, who checked a box indicating that appellant's condition was caused or aggravated by employment activity. In an accompanying report, Dr. Siek listed the history of injury as a January 4, 2005 work incident which appellant related occurred when he "was trying to pull apart two hampers which were stuck together and felt immediate sharp pain in the left low back." He noted that on June 4, 2004 appellant underwent an excision of the L4-5 disc, but he did not get any significant relief from surgery. Dr. Siek diagnosed: (1) status postoperative removal of L4-5 disc herniation, unsuccessful; and (2) continuing pain in the low back, left buttock and left leg with numbness.

Appellant's oral hearing was held on April 5, 2006. He submitted the January 10, 2005 report of Dr. Kalin who listed appellant's history and noted that on February 26, 2004 he was pulling an empty cage from a dumper when he felt pain in his left buttock and associated inability to extend the left leg. Later that day, appellant had the onset of severe pain in the left leg with an inability to extend the left leg. Dr. Kalin stated that subsequently appellant was feeling "about 50 [percent] improved prior to the most recent work-related left buttock and leg injury of January 4, 2005." He stated:

"In my opinion, by medical history, physical examination and review of available pertinent medical records and diagnostic studies, [appellant's] present condition is the result of the cumulative effects of the work-related [employing establishment] low back injury of February 26, 2004 when [he] developed a herniated nucleus pulposus of L5-S1 with lumbar radiculopathy, treated with lumbar decompression on June 7, 2004 from which [appellant] was feeling overall only 50 [percent] improved with residual pain in the left buttock and calf and tingling of the left foot for which he had previously authorized to have a nerve block and the more recent work-related [employing establishment injury] of January 4, 2005, which within a reasonable degree of medical probability has exacerbated [his] preexisting condition."

The hearing representative left the record open for 30 days for appellant to submit the medical reports he discussed at the hearing. However, no evidence was submitted.

By decision dated May 30, 2006, the hearing representative affirmed the August 12, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸

ANALYSIS

Appellant established that he was pulling a cage from the dumper on January 4, 2005 when the alleged injury occurred. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that appellant has failed to establish a causal relationship between his back conditions and the established work incident of January 4, 2005. The medical evidence does not provide rationalized medical opinion to establish that the employment incident caused an injury.

The January 4, 2005 duty status report and attending physician's report were completed by a person whose signature is illegible. Appellant also submitted an unsigned document of the same date indicating that he was treated for acute back pain. These reports have no probative value as the author(s) cannot be identified as a physician.⁹ As the reports lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's claim.¹⁰ In January 4, 2004 reports, Dr. Balen and Dr. Zika listed their impressions as back pain. However, the Board notes that pain is considered a symptom, not a diagnosis and

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term injury, see 20 C.F.R. § 10.5(a)(14).

⁶ *John J. Carlone*, *supra* note 4.

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *See Merton J. Sills*, 39 ECAB 572 (1988).

does not constitute a basis for payment of compensation.¹¹ Neither Dr. Balen nor Dr. Zika addressed causal relationship to explain how appellant's work duties of January 4, 2005 would cause or contribute to his back condition. Dr. Balen noted that appellant had a preexisting back condition for which he underwent surgery and experienced back pain. He did not explain how the work incident would cause or contribute to appellant's disability for work. Dr. Siek did check a box indicating that he believed that appellant's low back pain was causally related to the employment incident as described. However, he provided no rationale for his stated conditions. Dr. Siek also lists his diagnosis as continuing pain in the low back and, therefore, his opinion is also insufficient to meet appellant's burden of proof.¹² Dr. Kalin opined that his condition was caused by a previous February 26, 2004 work injury which was aggravated by the January 4, 2005 incident. However, he did not provide a clear opinion backed by medical rationale as to why appellant's exacerbation of his chronic low back syndrome was causally related to the January 4, 2005 incident. Dr. Kalin did briefly mention the January 4, 2005 incident but did not describe it in detail or explain how the incident was severe enough to cause appellant's condition.

Accordingly, appellant has failed to submit medical evidence sufficient to establish that that the employment incident caused a personal injury. Therefore, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury on January 4, 2005 causally related to factors of his federal employment.

¹¹ See *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30, 2006 and August 12, 2005 are affirmed.

Issued: October 19, 2006
Washington, DC

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

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

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