

	)	
<b>G.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 07-216</b>
	)	<b>Issued: March 15, 2007</b>
<b>U.S. POSTAL SERVICE, LITTLE ROCK</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Little Rock, AR, Employer</b>	)	
	)	

### Case Submitted on the Record

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

On October 31, 2006 appellant filed a timely appeal from a September 19, 2006 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

On July 27, 2006 appellant, then a 48-year-old mail handler, filed an occupational disease claim. On May 24, 2006 he first realized that his abdominal hernia was caused by factors of his federal employment. Appellant stopped work on June 21, 2006. He returned to light-duty work on July 8, 2006 and performed these duties until August 8, 2006. In an accompanying statement

dated July 8, 2006, appellant described the work duties he performed since January 21, 2006 as a mail handler. He discovered a bulge in his abdomen which was confirmed as a hernia by an attending physician on May 24, 2006. Surgery was performed on June 22, 2006. Appellant told his supervisors that he was undergoing surgery and that it was work related. On June 26, 2006 while recovering from hernia surgery, his back went out on him. After medical treatment, appellant regained some mobility on June 30, 2006. On July 5, 2006 he met with a surgeon who cleared him to return to work on that date with light-duty requirements. On the same date, appellant was evaluated by an attending family physician regarding his back condition, who confirmed the ailment, prescribed medication and released him to return to work on July 8, 2006 with light-duty restrictions until July 30, 2006.

On the reverse of appellant's claim form, Michael J. Estrigent, a supervisor, indicated that a challenge of the claim might be forthcoming following a review of the facts.

Appellant submitted an appointment slip indicating that he was scheduled to be examined by Dr. Lawrence T. Kim, a Board-certified surgeon, on August 16, 2006. A July 5, 2006 disability certificate of United States Air Force Captain Victor L. Holmes, a physician's assistant, stated that appellant could return to work on July 8, 2006. Captain Holmes indicated that appellant could not participate in sports/physical education activities until July 30, 2006 or lift more than 10 pounds for two weeks. Discharge instructions dated June 22, 2006 from the University of Arkansas for Medical Sciences Medical Center were signed by a registered nurse whose signature is illegible. Dr. Kim's July 5, 2006 form medical report indicated that appellant previously underwent an umbilical hernia repair at Springhill Baptist Hospital and that he noticed a recurrence. He stated that appellant sustained an abdominal hernia and that he could work full time with restrictions.

By letter dated August 8, 2006, the Office requested that the employing establishment provide a copy of appellant's position description including the physical requirements. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested a rationalized medical report from his attending physician which described his symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to his condition.

In a May 25, 2006 report, Dr. Kim opined that appellant sustained a ventral hernia. His July 5, 2006 report stated that he developed seroma and liquified hematoma in the surgical site that was not infected and that otherwise he was recovering well from a repair of his ventral hernia.

An unsigned chest x-ray report dated June 19, 2006 found healed granulomatous disease, mild cardiomegaly and no acute cardiopulmonary disease. An unsigned June 19, 2006 laboratory report noted blood test results. In a July 14, 2006 letter, Gillian Taylor, a registered nurse, stated that appellant was under Dr. Kim's care and that he underwent a ventral hernia repair on June 22, 2006. Dr. Kim instructed him not to return to work until after his postoperative appointment on July 5, 2006. Ms. Taylor noted that Dr. Kim was out of state and, thus was unavailable to sign Family Medical Leave Act forms for appellant until August 1, 2006.

In a September 6, 2006 memorandum, the employing establishment controverted appellant's claim. It stated that he failed to provide rationalized medical opinion evidence establishing a causal relationship between his claimed condition and his employment. The employing establishment noted that Dr. Kim's May 24, 2006 medical evidence established that appellant sustained a recurrence of an umbilical hernia repair which was performed at Springhill Baptist Hospital.

In an August 16, 2006 report, Dr. Kim stated that appellant related that he was required to perform a great deal of lifting at work. Appellant originally underwent an umbilical hernia repair at an outside hospital. He sustained a recurrence near the surgical site and sought medical attention from Dr. Kim in May 2006. Dr. Kim diagnosed recurrent ventral hernia and repaired it in June 2006. He stated that it had healed without difficulty and that appellant could return to work, including heavy lifting. Dr. Kim related that it was "impossible" for him to determine if there was a causative nature between heavy lifting and appellant's hernia, although it was well known that heavy lifting and straining could predispose and exacerbate a hernia. He opined that it was very reasonable that heavy lifting had contributed to appellant's condition.

By decision dated January 10, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence failed to establish a causal relationship between the alleged hernia and his employment duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</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>3</sup>

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 the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.<sup>4</sup> Neither the fact that appellant's condition became apparent during a period of employment, nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.<sup>5</sup>

### ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between his hernia condition and his federal employment. The record reveals that appellant was previously diagnosed with a hernia for which he underwent surgery at Springhill Baptist Hospital.

Appellant submitted an appointment slip which scheduled him for an examination by Dr. Kim on August 16, 2006. This evidence fails to provide a definite diagnosis for an abdominal condition or to address whether the diagnosed condition was caused or aggravated by factors of appellant's employment. Dr. Kim's appointment slip is insufficient to establish appellant's burden of proof.

The July 5, 2006 disability certificate from Captain Holmes, a physician's assistant, June 22, 2006 discharge instructions from a registered nurse whose signature is illegible and July 14, 2006 letter from Ms. Taylor, a registered nurse, are of no probative value inasmuch as a physician's assistant<sup>6</sup> and a registered nurse<sup>7</sup> are not considered a "physician" under the Act.

Dr. Kim's May 25 and July 5, 2006 reports found that appellant sustained a ventral hernia. He stated that, although appellant developed seroma and liquified hematoma in the surgical site it was not infected and he was recovering well from surgery. Dr. Kim released appellant to full-time work with restrictions on July 5, 2006. However, he did not address how the hernia condition was caused or aggravated by factors of appellant's employment. In an August 16, 2005 report, Dr. Kim found that appellant's ventral hernia had healed without difficulty and that he could return to work, including heavy lifting. He stated that it was "impossible" to determine the causal relationship between appellant's hernia and his work requirement of heavy lifting. Dr. Kim, however, noted that it was well known that heavy lifting and straining predispose and exacerbate a hernia. He opined that it was very reasonable that heavy lifting contributed to appellant's condition. Dr. Kim's opinion regarding the causal relationship between appellant's hernia and his employment is speculative and, thus, of

---

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>6</sup> 5 U.S.C. § 8101(2); see *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>7</sup> 5 U.S.C. § 8101(2); see *Sheila A. Johnson*, 46 ECAB 323 (1994).

diminished probative value.<sup>8</sup> He did not explain how the lifting required in appellant's employment would cause or contribute to his hernia. In this case, the record reflects prior surgery for a hernia. Dr. Kim did not adequately discuss how lifting activities would contribute to the source or herniation found at the surgical site. His opinion is also equivocal in that he concluded on the one hand that it was "impossible" for him to determine causal relationship and, on the other, that it was reasonable that heavy lifting contributed to appellant's condition. Due to the lack of medical rationale Dr. Kim's opinion is insufficient to establish appellant's burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a hernia causally related to factors of his federal employment as a mail handler. Appellant did not meet his burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2007  
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

---

<sup>8</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006); *Cecelia M. Corley*, 56 ECAB \_\_\_\_ (Docket No. 05-324, issued August 16, 2005).