United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 09-1374**
	)	**Issued: December 15, 2009**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer	)	

Appearances:
Appellant, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 5, 2009 appellant filed a timely appeal from a December 19, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim. 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 established that he sustained an injury in the performance of duty on September 24, 2008.

FACTUAL HISTORY

On September 24, 2008 appellant, a 41-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging he sustained lower back pain while delivering mail on that date.

In a September 24, 2008 report, Dr. James L. Hult, with the U.S. Healthworks Medical Group, reported findings on examination and diagnosed lumbar sprain. He noted that appellant's back problem surfaced while delivering mail, returned appellant to work with no restrictions but prescribed several weeks of physical therapy. On September 25, 2008 Dr. Hult diagnosed

lumbar strain and provided work restrictions concerning the amount of time appellant could spend standing and weight restrictions for lifting, pushing and pulling activities. On September 29 and October 2, 2008 he diagnosed lumbar strain, lumbar sprain and muscle spasm. On October 8, 2008 Dr. Hult expanded his diagnosis to include thoracic and lumbar strain.

Physical therapy notes were received by the Office from October 2 to November 12, 2008.

On October 15 and 29, 2008 Dr. Safwan Kazmouz, Board-certified in family medicine, reported that appellant could return to work without restrictions. He diagnosed lumbar strain and sprain.

By letter dated November 18, 2008, the Office referenced that appellant's claim had originally been handled as a simple, uncontroverted claim with no loss of work, but since the medical payments had exceeded $1,500.00 it was being formally adjudicated. It explained to appellant the type of evidence needed to establish his claim and provided him 30 days to respond.

By decision dated December 19, 2008, the Office denied the claim because appellant had submitted no further evidence to establish that the event occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while 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 essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] *C.S.*, 60 ECAB __ (Docket No. 08-1585, issued March 3, 2009).

[3] *S.P.*, 59 ECAB __ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

ANALYSIS

The Office denied appellant's claim based on its finding that he did not establish the occurrence of a September 24, 2008 work incident. The Board finds that the evidence is insufficient to establish that appellant experienced any incident at the time, place and in the manner alleged.

While it is undisputed that appellant was delivering mail on the day in question, the mere fact that he experienced back pain while at work does not establish a work-related injury. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[5] or that work activities produce symptoms revelatory of an underlying condition[6] does not raise an inference of causal relationship between a claimed condition and employment factors.

The medical reports submitted from Dr. Hult do not provide a rationalized statement specifically identifying the cause of the pain and simply diagnosed thoracic and lumbar strain. Although he referred to the fact that appellant was carrying mail at the time of the pain is not sufficient to prove there was a work-related incident. Appellant also came under the care of Dr. Kazmouz who indicated that he could return to work. Neither of these physicians provided any medical opinion on the etiology of appellant's back pain. The evidence does not establish with any specificity, the mechanism by which an injury occurred that was causally related to his employment.

Appellant further submitted notes from physical therapists. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.[7] Thus the physical therapy reports appellant submitted have no probative value.

Based on the evidence of record, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant had not established an injury in the performance of duty on September 24, 2008.

[5] *E.A.*, *supra* note 5; *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[6] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

[7] *See* 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board