

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

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**P.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dover, DE, Employer**

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**Docket No. 10-383  
Issued: September 7, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On November 25, 2009 appellant, through his representative, filed a timely appeal of a November 4, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury on February 9, 2009 in the performance of duty.

**FACTUAL HISTORY**

On February 23, 2009 appellant, then a 58-year-old mail handler, filed a traumatic injury claim alleging that on February 9, 2009 he injured his right hip, lower back and the right portion of his pelvic joint from pulling heavy pallets of mail. He stopped work on February 10 and returned on February 11, 2009.

Appellant submitted a February 27, 2009 x-ray report from Dr. Victoria Kong, a diagnostic radiologist, who found that his left foot had slight osteoarthritis at the first metatarsal pharyngeal joint and the mid-tarsal row. Dr. Kong also noted no acute abnormality of the left foot.

On March 20, 2009 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

In a February 10, 2009 work restriction form, Dr. Lisa Reid, a Board-certified family practitioner, advised that appellant could not push, pull or lift over 200 pounds due to pain. On February 27, 2009 she noted appellant's complaint of left foot pain related to lifting and pulling heavy crates. Dr. Reid noted pain at the base of the fifth metatarsal. She diagnosed foot pain. In a March 12, 2009 duty status report, Dr. Reid diagnosed back pain and also noted foot pain. She indicated that appellant was able to work with restrictions.

A May 21, 2007 left foot x-ray report from Dr. William O'Brien, an osteopath Board-certified in diagnostic radiology, revealed mild degenerative changes without evidence of acute fracture or dislocation. In a report of the same date, Dr. Elizabeth Cerva, an osteopath and family practitioner, noted appellant's history of foot pain beginning two to three months prior. Examination revealed tenderness across the top arch of the ankle with palpation and motion. Dr. Cerva found soft tissue foot pain. Appellant also submitted an August 24, 2007 physician's assistant report finding left foot tenderness on palpation of the shaft of the first metatarsal. The record also contains a physical therapy note dated March 13, 2009.

In an undated statement, appellant noted that he first experienced left foot pain in March 2007 which worsened on February 26 "of this year."<sup>1</sup> He believed that pushing heavy overloaded "wireainers" aggravated his condition over time and a recent injury to his back and right hip aggravated it further. In an April 15, 2009 statement, appellant indicated that on February 9, 2009 he injured his back and right hip while pulling 20 heavy pallets of advertising circulars. He noted the incident to his supervisor, but was not informed about filling out (Form CA-1), claim for a traumatic injury.

On February 10, 2009 Dr. Reid noted appellant's complaint of back and right hip pain. She reported his belief that this condition was related to pulling heavy pallets at work. Dr. Reid found that appellant's back was tender at the right sacroiliac joint. She diagnosed back and right hip pain.

In an undated statement, appellant indicated that, on February 9, 2009, after bringing in the last pallet of circulars, he felt loss of support in his right leg. He notified his supervisor that he was injured and would be off work the following day to see a doctor.

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<sup>1</sup> Based on the context of appellant's statement and the date it was received by the Office, he is referring to the year 2009.

In an April 20, 2009 decision, the Office denied appellant's claim finding that the evidence did not support that an injury occurred as alleged. It also noted that it was unclear whether appellant had claimed an aggravated left foot condition or right hip, lower back and right pelvic condition as identified in CA-1 form.

Thereafter, the Office received an April 9, 2009 work restriction form from Dr. Reid diagnosed back and foot pain and listed work restrictions.

On May 18, 2009 appellant requested a telephone hearing that was held on September 10, 2009.<sup>2</sup>

Following the hearing, appellant submitted additional medical evidence. On April 2, 2009 Dr. Reid noted his complaint of lower back and left leg pain. She noted that appellant reported bending over to turn off a pipe and felt pain in his leg. Dr. Reid also noted his belief that his pain was all due to pulling heavy pallets and inadequate equipment at work. She diagnosed hypertension and back pain. On April 9, 2009 Dr. Reid noted that appellant's back and left foot was still painful. She reiterated his belief that his pain was due to pushing pallets. Dr. Reid diagnosed back and foot pain. She also referred appellant to orthopedics and podiatry. In an April 6, 2009 lumbar spine magnetic resonance imaging (MRI) scan report, Dr. Robert Varipapa, a Board-certified neurologist, found mild moderate multilevel degenerative disc disease more so at L4-5 with mild (Grade 1) spondylolisthesis and associated mild moderate broad pseudo-disc osteophyte formation slightly more so to the left was present.

Appellant submitted a note from a physical therapist dated July 20, 2009 diagnosing back and right hip pain. He also submitted a July 21, 2009 physician's assistant note diagnosing a small area of subchondral marrow at the right hip and mild to moderate multilevel degenerative disc disease of the lumbar spine.

In a July 23, 2009 letter to his representative, appellant noted pulling pallets at work on February 9, 2009 when he felt back pain and loss of function of his right leg. He also reported he was unable to support his weight. Appellant noted reporting the incident to his supervisor. He also noted that he had pulled pallets on February 4, 2009 and felt soreness in his right leg with pain and dysfunction in that leg later that week. Appellant asserted that the pain presented itself immediately after working with pallets on February 9, 2009.

In a November 4, 2009 decision, an Office hearing representative affirmed as modified the April 20, 2009 decision. She found that appellant established fact of incident, but the medical evidence did not establish causal relationship between the work event and alleged injury.

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<sup>2</sup> During the hearing, appellant indicated that he was not claiming a left foot condition as a part of the present claim as it was a separate issue.

## 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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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. 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>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>6</sup>

## ANALYSIS

The record reflects that appellant pulled pallets of mail on February 9, 2009 in the performance of duty. However, the medical evidence is insufficient to establish that pulling pallets of mail caused or aggravated his alleged right hip, low back and right pelvic conditions.

Dr. Reid's reports dated February 10, April 2 and 9, 2009 diagnosed back pain, right hip pain and hypertension. In addressing the cause of appellant's condition, she noted that appellant attributed his condition to pulling heavy pallets of mail at work. This does not reflect Dr. Reid's own independent opinion on causal relationship, but instead is a reiteration of appellant's

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *S.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

opinion.<sup>7</sup> Additionally, her February 10 and March 12, 2009 reports did not provide any opinion on causal relationship and they only diagnosed back and foot pain and provided work restrictions.<sup>8</sup> Moreover, Dr. Reid's February 27, 2009 report does not address any of appellant's claimed conditions as it only addressed his complaint of foot pain. As she did not provide her own opinion in which she explained the reasons pulling pallets at work on February 9, 2009 would cause or aggravate a diagnosed medical condition, her opinion is insufficient to establish appellant's claim.

Similarly, Dr. Kong's February 27, 2009 left foot x-ray report found slight osteoarthritis, but her report did not discuss any of appellant's claimed conditions. Also her assessment of his left foot did not include an opinion regarding whether the February 9, 2009 work incident caused or aggravated a left foot condition. Likewise, in an April 6, 2009 lumbar MRI scan report, Dr. Varipapa did not provide an opinion regarding whether appellant's work incident caused this lumbar condition. As noted, medical evidence without an opinion on causal relationship is of limited probative value.

The medical reports from Drs. O'Brien and Cerva do not support appellant's claim as both reports predate the claimed work incident on February 9, 2009. The record also contains treatment notes from physician's assistants and physical therapists. However, these treatment reports do not constitute competent medical evidence as they are not from a physician as defined by the Act.<sup>9</sup>

For these reasons, the medical evidence is insufficient to establish that appellant sustained a right hip, low back and right pelvic condition on February 9, 2009 in the performance of duty.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on February 9, 2009 in the performance of duty.

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<sup>7</sup> *William Nimitz*, 30 ECAB 567 (1979) (where the Board has held that an award for compensation may not be predicated upon appellant's belief of causal relation as such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability); *see Lois E. Culver* (Clair L. Culver), 53 ECAB 412 (2002) (the opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).

<sup>8</sup> *See S.E.*, 60 ECAB \_\_\_ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>9</sup> *See George H. Clark*, 56 ECAB 162 (2004) (the Board has noted a physician's assistant is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician); *Barbara Williams*, 40 ECAB 649 (1989) (reports of appellant's physical therapists are of no probative value as physical therapists are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion). *See also* 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 4, 2009 is affirmed.

Issued: September 7, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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