

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

V.N., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer

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**Docket No. 11-684
Issued: September 29, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2011 appellant filed a timely appeal from a January 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 sustained an injury as a result of the December 2, 2010 employment incident.

FACTUAL HISTORY

On December 6, 2010 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim alleging that on December 2, 2010 he sustained an injury to his lower back as a result of his backbone deteriorating. He stopped work on December 6, 2010. Appellant explained that,

¹ 5 U.S.C. § 8101 *et seq.*

around 1:00 p.m., he was delivering his mail route when he experienced low back pain. He stated that his deteriorating backbone was causing him much pain and that he needed to stay home to see a doctor.

In December 6, 2010 work excuse and duty status reports, a physical therapist excused appellant from work until December 12, 2010. He stated that appellant was treated for sudden onset of low back pain while working and that an examination revealed that appellant's spinal movement was restricted by pain and muscle spasm.

In a December 8, 2010 letter, the employing establishment controverted appellant's claim alleging that his claim appeared to be an occupational disease claim and that he failed to provide sufficient evidence establishing a causal relationship between his medical condition and his employment.

On December 8, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional evidence. It specifically requested that he provide a medical report by his treating physician, which included dates of examination and treatment, history of injury, description of findings, results of x-rays and tests, a medical diagnosis, and a physician's opinion supported by medical rationale explaining how the reported incident caused or aggravated his claimed condition.

In January 26, 2010 x-ray reports, Dr. Kopresh Gudi, a Board-certified diagnostic radiologist, observed no fracture, dislocation, or other bony abnormalities in appellant's left tibia, fibula, femur and left hip. X-rays of appellant's lumbosacral spine also failed to reveal any fracture, subluxation and degenerative changes. Dr. Gudi observed that his intervertebral disc spaces were well maintained and intact.

In a May 20, 2010 magnetic resonance imaging (MRI) scan report, Dr. William Pagano, a Board-certified internist, noted appellant's history of low back pain and diagnosed mild degenerative disc disease at L4-5 and L5-S1 with a central and bilateral disc herniation L4-5, larger on the left, giving mass effect on the anterior left aspect of the sac and on the left L5 root. The examination revealed normal distal thoracic cord, conus and cauda equine. Dr. Pagano also observed diffuse loss of disc signal with loss of disc height at L4-5 and L5-S1 related to degenerative disc disease, central and bilateral disc herniation at L4-5, and small subligamentous central and bilateral disc herniation lateralizing to the left at L5-S1.

In a December 28, 2010 attending physician's report, Dr. Baum stated that on December 2, 2010 appellant fell while working and diagnosed lumbar derangement, multilevel disc herniation and S1 radiculopathy. He also checked a box marked "yes" that appellant's condition was caused or aggravated by the December 2, 2010 fall at work. Dr. Baum noted that appellant was totally disabled since December 2, 2010. He also provided a duty status report, which provided a diagnosis.

By decision dated January 10, 2011, OWCP denied appellant's claim on the grounds of insufficient medical evidence establishing that he sustained a diagnosed medical condition causally related to the December 2, 2010 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁶ Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.⁷ 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 specified employment factors or incident.⁸ 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.⁹

FECA provides that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related

² On January 3, 2011 appellant filed an appeal before the Board. On January 12, 2011 he submitted an appeals request form and marked requests for an oral hearing, review of the written record, reconsideration and appeal before the Board. Appellant submitted additional evidence. On February 2, 2011 he submitted a request for reconsideration along with additional evidence. On March 9, 2011 OWCP advised appellant that it was unable to issue a decision on his requests for reconsideration and oral hearing because he also requested an appeal before the Board.

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁶ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁷ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

to the aggravation.¹⁰ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹¹

ANALYSIS

Appellant alleges that on December 2, 2010 he sustained a lower back injury while delivering mail at work. By decision dated January 10, 2011, OWCP accepted that the December 2, 2010 incident occurred as alleged but denied his claim on the grounds of insufficient medical evidence establishing that he sustained a diagnosed condition as a result of this incident. The Board finds that the medical evidence supports a diagnosis of lumbar derangement and disc herniation but fails to establish that these conditions were causally related to the accepted employment incident.

The Board notes that the evidence of record supports that appellant suffered from a preexisting back condition. In a May 20, 2010 MRI scan report, Dr. Pagano noted a history of lower back pain and observed diffuse loss of disc signal with loss of disc height at L4-5 and L5-S1 related to degenerative disc disease, central and bilateral disc herniation at L4-5, and small subligamentous central and bilateral disc herniation lateralizing to the left at L5-S1. He diagnosed mild degenerative disc disease at L4-5 and L5-S1 with a central and bilateral disc herniation L4-5. Although Dr. Pagano provided findings and a medical diagnosis, he did not opine on the cause of appellant's back condition nor explain how the December 2, 2010 employment incident caused or aggravated this condition. Similarly, Dr. Gudi's January 26, 2010 x-ray report does not provide an opinion on the cause of appellant's back condition. The Board has found that 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.¹²

Appellant also submitted Dr. Baum's December 28, 2010 attending physician's report. Dr. Baum noted appellant's history of low back pain and provided a history of injury that on December 2, 2010 appellant fell while working. This history of injury is inconsistent with appellant's description of his injury since he did not allege that he fell while working, but rather that he felt back pain while delivering his mail route. Dr. Baum diagnosed lumbar derangement, multilevel disc herniation, and S1 radiculopathy. He further checked a box marked "yes" that appellant's condition was caused or aggravated by the employment incident. Dr. Baum's opinion regarding causal relationship is of limited probative value as it is not based on an accurate history of injury. The Board has also held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹³

The other medical evidence of record consists of various physical therapy reports. These reports, however, also fail to establish causal relationship because nurses, physician's assistants,

¹⁰ *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

¹¹ *Id.*

¹² *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

¹³ *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

physical and occupational therapists are not “physicians” as defined by FECA.¹⁴ Thus, their medical opinions regarding diagnosis and causal relationship are of no probative medical value and are insufficient to establish appellant’s claim.¹⁵

On appeal, appellant alleges that on December 2, 2010 he injured his back while delivering mail in the snow and that he previously submitted all the medical evidence to OWCP. The evidence submitted, however, does not contain any rationalized medical opinion evidence establishing that appellant’s back condition was causally related to or aggravated by the December 2, 2010 employment incident. As previously noted, causal relationship is a medical issue that can only be established by the submission of rationalized medical opinion evidence.¹⁶ As appellant has not submitted such rationalized medical opinion evidence in this case, he did not meet his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his low back condition was causally related to the December 2, 2010 employment incident.

¹⁴ Section 8102(2) of FECA provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹⁵ *Roy L. Humphrey*, 57 ECAB 238 (2005); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *E.H.*, Docket No. 08-1862 (issued July 8, 2009).

¹⁶ *Mary J. Summers*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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