

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH W. PAULS and U.S. POSTAL SERVICE  
POST OFFICE, Bakersfield, CA

*Docket No. 01-1065; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on January 24, 2000.

On February 18, 2000 appellant, then a 47-year-old registry clerk, filed a traumatic injury claim, alleging that on January 24, 2000 he strained his lower back from bending over to move heavy parcels from the bottom of two containers. A witness stated that he saw appellant moving heavy boxes by himself from the bottom of an all-purpose container (APC).

Accompanying the claim were a February 1, 2000 statement by appellant and a March 6, 2000 letter from the employing establishment challenging appellant's claim for continuation of pay.

By letter dated March 21, 2000, the Office of Workers' Compensation Programs advised appellant of the circumstances under which a chiropractor is considered a physician under the Federal Employees' Compensation Act<sup>1</sup>. The Office also explained the need for a report from a doctor that included dates of examination and treatment, a detailed description of his findings, results of all x-rays and tests, a diagnosis and an opinion with supporting rationale on the causal relationship between appellant's diagnosed condition and the January 24, 2000 incident.

By decision dated April 24, 2000, the Office, after receiving no response from appellant, denied appellant's claim, finding that the claimed incident occurred as alleged, but that the medical evidence failed to establish that appellant's sustained an injury as a result of the incident.

Dr. Tomas B. Rios stated that he saw appellant on July 14, 2000 diagnosed lumbar radiculitis and myospasms of the paravertebral muscles and discussed a treatment plan. The record also includes July 17, August 4, September 11 and October 6, 2000 reports by Dr. Rios.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

By letter dated January 16, 2001, appellant requested reconsideration of the April 24, 2000 decision. Accompanying the request were an undated statement from a witness whose statement was the same as that given on the claim form; an October 8, 2000 statement by appellant; May 24, June 7, June 21 and July 11, 2000 progress notes from Kaiser; May 24 and July 10, 2000 radiology reports; and a November 20, 2000 report by Dr.Rios.

On January 22, 2001 the record was supplemented with February 22 and October 14, 1999 and February 28 and March 27, 2000 progress notes from Kaiser.

By decision dated February 1, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant modification of its prior decision.

The Board finds that appellant has not established that the January 24, 2000 employment incident resulted in an injury.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing 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 and that the claim was filed within the applicable time limitations of the Act.<sup>3</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>4</sup> that the injury was sustained while in the performance of duty<sup>5</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>7</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>8</sup> In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, but that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>5</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>7</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Elaine Pendleton*, *supra* note 3.

The second component of fact of injury, whether the employment incident caused a personal injury, generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup>

In this case, there is insufficient rationalized medical opinion evidence supporting a causal relationship between the January 24, 2000 employment incident and appellant's diagnosed conditions of lumbar radiculitis, lumbar disc extrusion and multiple level central canal stenosis. Also, there is no contemporaneous medical evidence. The earliest report dated May 24, 2000 supports treatment on that day, but this was four months after the employment incident. An magnetic resonance imaging (MRI) scan on July 10, 2000 was interpreted by Dr. John M. Gundzik, a Board-certified radiologist, to reveal bilateral L5 spondylolysis, moderate bilateral foraminal stenosis, moderate disc extrusion at L4-5, mild stenosis at L3-4 and disc bulging and mild stenosis at L2-3. However no opinion was given on the causal relationship between appellant's condition and the employment-incident of January 24, 2000. Dr. Rios' reports do not contain an opinion on causal relationship until November 20, 2000 and at that time he did not relate a specific condition to the January 24, 2000 employment incident. Nor did he explain how the incident caused or aggravated a specific condition. Therefore, Dr. Rios' reports are insufficient to establish appellant's claim.

By letter dated March 21, 2000, the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

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<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

The February 1, 2001 and April 24, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>10</sup>

Dated, Washington, DC  
December 21, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>10</sup> The Board notes that subsequent to the Office's February 1, 2001 decision, appellant submitted additional evidence. The Board has no jurisdiction to review evidence that was not before the Office at the time of its decision. 20 C.F.R. 501 (c). Appellant may submit this evidence to the Office with a request for reconsideration.