

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREDERICK SHARP and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, St. Louis, MO

*Docket No. 03-2073; Submitted on the Record;  
Issued December 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on November 23, 2001.

On January 17, 2002 appellant, then a 46-year-old mail handler, filed a traumatic injury claim alleging that on November 23, 2001 he experienced back and left leg pain while pushing a bulk mail container onto a trailer. He stopped work on December 1, 2001. Appellant's claim was accompanied by medical evidence. His supervisor, William Caldwell, controverted his claim on the grounds that appellant told him that his back condition was not work related.

On February 14, 2002 appellant filed a claim for compensation (Form CA-7), to buy back leave he used due to his injury. He submitted medical evidence in support of his claim.

By letter dated March 6, 2002, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence he needed to submit to establish his claim. On March 28, 2002 appellant provided factual information in response to the Office's March 6, 2002 letter.

By decision dated April 12, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a condition causally related to the November 23, 2001 employment incident. In an April 9, 2003 letter, appellant, through his attorney, requested reconsideration, accompanied by factual and medical evidence.

On April 16, 2003 the Office requested that an Office medical adviser review appellant's case record to determine whether it supported a job-related herniated disc that required two surgeries. On April 25, 2003 the Office medical adviser stated that additional medical records were necessary to determine whether appellant sustained a work-related back condition.

By letter dated May 8, 2003, the Office advised appellant's attorney to submit additional medical records within 20 days of the date of the letter. He did not respond.

The Office issued a May 29, 2003 decision denying appellant's request for modification based on a merit review of the claim.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on November 23, 2001.

A claimant who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.<sup>2</sup> In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered, in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>4</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence based on complete factual and medical background showing a causal relationship between the claimed condition and the identified factors.<sup>5</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>6</sup>

In this case, it is undisputed that appellant experienced back and left leg pain while pushing a bulk mail container onto a trailer on November 23, 2001. The medical evidence of record, however, is insufficient to establish that the incident caused an injury. Appellant submitted medical reports and treatment notes regarding his back and leg conditions. The relevant medical evidence includes a January 29, 2002 attending physician's report of Dr. Alphonse Beauboeuf, an internist, and an April 3, 2003 letter from Dr. Kenneth R. Smith, Jr., a Board-certified neurosurgeon, to appellant's attorney.

In his January 29, 2002 attending physician's report, Dr. Beauboeuf indicated the date of injury as November 23, 2001 and diagnosed a herniated bulging disc at L2-3, L3-4 and L4-5. He stated that the cause of this condition was unknown. Dr. Beauboeuf's report is insufficient to

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<sup>1</sup> 5 U.S.C. § 8101-8193.

<sup>2</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.110(a).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

<sup>5</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>6</sup> *Charles E. Evans*, *supra* note 2.

establish appellant's burden, inasmuch as it did not provide that appellant's back condition was caused by the November 23, 2001 employment incident.

In his April 3, 2003 letter, Dr. Smith provided a history of appellant's medical treatment and stated that he injured his back while at work as a mail handler pushing heavy equipment and loading a trailer. He further stated that appellant's symptom complex was consistent with computerized tomography and magnetic resonance imaging scan findings. Dr. Smith concluded that there was a definite causal relationship when working with heavy equipment and back injuries. His letter is insufficient to establish appellant's burden because he did not provide any medical rationale explaining how or why appellant's back condition was caused by the November 23, 2001 employment incident.

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused by the November 23, 2001 employment incident, he has failed to satisfy his burden of proof in this case.

The May 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
December 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member