

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

GERALD A. TURNER, Appellant

and

**U.S. POSTAL SERVICE, HEADQUARTERS,
Washington, DC, Employer**

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**Docket No. 03-270
Issued: July 1, 2004**

Appearances:
Gerald A. Turner, pro se
Thomas G. Giblin, Esq., for the Director

Oral Argument June 10, 2004

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 5, 2002 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated December 28, 2001 and October 21, 2002 denying his claim for compensation on the grounds that he failed to establish that he sustained an injury in the performance of duty on October 22, 2001. Pursuant to 20 C.F.R. §§ 501.3(c) and 501.2, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on October 22, 2001.

FACTUAL HISTORY

On October 22, 2001 appellant, then a 48-year-old custodian, filed a claim alleging that he sustained acute lumbar strain on that date when he attempted to push a trash bin. Appellant stopped work on that date.

In a hospital work disposition note dated October 22, 2001, a physician diagnosed acute lumbar strain and found that appellant could resume work on October 25, 2001 with restrictions on lifting, standing and twisting for four days.¹

The record contains the front page of a Form CA-16, authorization for examination and/or treatment, completed by the employing establishment on October 22, 2001. Appellant's supervisor described the nature of the injury as a "sharp pain in [the] back."²

The Office requested additional factual and medical information from appellant in a letter dated November 28, 2001. Appellant did not respond within the 30 days allotted by the Office for the submission of the requested information.

In a decision dated December 28, 2001, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The Office found that the evidence established that appellant experienced the claimed employment incident on October 22, 2001 but that the medical evidence was insufficient to establish that he sustained a medical condition resulting from the accepted employment incident.

In a report dated November 1, 2001, received by the Office on January 2, 2002, Dr. Jorge A. Mondino, an orthopedic surgeon, noted that appellant worked at the employing establishment. He stated:

"On October 22 [appellant] was at work, pushing something and felt [a] sharp pain on the back. He went to the emergency room at [the hospital] where he was evaluated and discharged on medication."

Dr. Mondino listed findings of lumbar tenderness on palpation and "paraspinal muscle spasm." He diagnosed acute lumbosacral strain and referred appellant for physical therapy.³

On January 7, 2002 appellant requested a hearing before an Office hearing representative.

In a duty status report dated November 23, 2001, received by the Office on March 15, 2002, Dr. Mondino diagnosed lumbar strain and checked "yes" that the history of injury provided by appellant corresponded to that described on the form of "pushing trash cart, back" with a date of injury listed as October 22, 2001. He diagnosed lumbar strain and found that appellant was unable to work.⁴

¹ The name of the physician is not legible.

² By letter dated October 31, 2001, an official with the employing establishment noted that appellant had not provided a completed Form CA-16 from the hospital.

³ In a duty status report dated November 1, 2001, Dr. Mondino diagnosed lumbar strain. The history provided on the form is "pushing cart, back."

⁴ In a certificate of disability dated November 23, 2001, Dr. Mondino found that appellant should remain off work until his next scheduled appointment on December 7, 2001.

Dr. Mondino found that appellant could resume work with restrictions in a duty status report dated December 7, 2001. In a certificate of disability from the same date, Dr. Mondino opined that appellant could return to light-duty employment on December 23, 2001.

In a progress note dated December 11, 2001, Dr. Mondino listed findings on examination of “marked tenderness on palpation over the lumbar area” and recommended that appellant remain off work for two weeks. In a duty status report of the same date, Dr. Mondino diagnosed lumbosacral strain and found that appellant was totally disabled.

Appellant submitted a progress note dated December 28, 2001 from Dr. Mondino, who noted that appellant’s lower extremities were neurologically intact and that he had completed physical therapy.⁵ He released appellant to return to work on January 2, 2002.

A hearing was held on June 24, 2002. In a decision dated October 21, 2002, the hearing representative affirmed the Office’s December 28, 2001 decision as modified to reflect that appellant failed to establish that his diagnosed condition of lumbosacral strain was causally related to the October 22, 2001 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁶ 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; 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁷ 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.⁸

ANALYSIS

In this case, the Office accepted that appellant was a federal employee who timely filed his claim for compensation benefits. The Office further accepted that the October 22, 2001 employment incident occurred at the time, place and in the manner alleged. The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish causal relationship between the diagnosed

⁵ The record contains physical therapy notes dated November and December 2001. However, reports from a physical therapist are of no probative value as a physical therapist is not a physician under the Federal Employees’ Compensation Act and is not competent to render a medical opinion. *See* 5 U.S.C. § 8101(2); *Linda Blue*, 50 ECAB 227 (1999).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

condition and the employment incident, appellant must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.⁹

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁰

In a report dated November 1, 2001, Dr. Mondino discussed appellant's history of experiencing back pain on October 22, 2001 while pushing something at work. He noted that appellant received treatment at the emergency room on October 22, 2001. Dr. Mondino listed findings on physical examination and diagnosed acute lumbosacral strain. In a duty status report dated November 23, 2001, Dr. Mondino checked "yes" that the diagnosed condition of lumbar strain corresponded to that provided on the form of appellant pushing a trash cart on October 22, 2001. He opined that appellant was disabled from employment.

The Board notes that Dr. Mondino provided a consistent history of injury and, in his November 23, 2001 form report, related appellant's condition of lumbar strain to the October 22, 2001 employment incident. Although none of the reports from Dr. Mondino contain a finding of causal relationship supported by medical rationale sufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an injury in the performance of duty on October 22, 2001, the reports raise an inference of causal relationship sufficient to require further development by the Office.¹¹ Additionally, the record contains no opposing medical evidence. The case will therefore be remanded to the Office for further development of the medical evidence to determine whether appellant sustained an injury resulting from the October 22, 2001 employment incident and, if so, the exact nature and extent of any disability arising therefrom. After such development of the case record as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 21, 2002 and December 28, 2001 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member