

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

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**OSCAR ESPINOSA, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Miami, FL, Employer**

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**Docket No. 03-747  
Issued: October 15, 2004**

*Appearances:*  
*Oscar Espinosa, pro se*  
*Miriam Ozur, Esq., for the Director*

*Oral Argument held September 14, 2004*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On January 29, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 22, 2002 denying his claim for a low back injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a low back injury in the performance of duty.

**FACTUAL HISTORY**

On October 16, 2001 appellant, then a 46-year-old clerk, filed a claim alleging that he sustained a disc herniation at L4-5 when lifting a box at work on September 21, 2001. Appellant did not stop work.

Appellant submitted a September 28, 2001 disability statement from Dr. Francisco M. Macias, a Board-certified internist, who diagnosed lumbar myofascial pain syndrome and indicated that appellant would be disabled from September 28 to October 4, 2001. Appellant

also sought treatment from Dr. Segundo Corripio, a Board-certified internist, who on October 9, 2001 noted that appellant injured his back on September 21, 2001 while lifting heavy boxes. He noted findings upon physical examination of forward flexion of 60 degrees with pain and tenderness in the left lumbar region and mid-low back. Dr. Corripio diagnosed lumbosacral sprain, and prepared an attending physician's report dated October 9, 2001 which noted that on September 21, 2001 appellant was lifting heavy boxes and injured his low back. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment duties. In a duty status report dated October 9, 2001, Dr. Corripio returned appellant to work subject to various restrictions.

By letter dated October 29, 2001, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his back injury.

In treatment notes dated October 11 to 17, 2001, Dr. Diederich Hueck, a Board-certified internist, noted findings upon examination of limited side bending of 10 degrees, backward bending was tender with minimal range of motion and forward bending was 60 degrees with pain. He returned appellant to work with restrictions. In an attending physician's report dated October 23, 2001, Dr. Corripio noted a history of injury and diagnosed a back sprain. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment activity. A magnetic resonance imaging scan dated October 26, 2001 revealed a moderate degree of degenerative disc disease at L4-5 and L3-4 with associated small to moderately sized right paracentral dorsal disc herniation at L4-5.

Dr. Carl Balmir, a Board-certified internist, noted in a November 1, 2001 report that he treated appellant for a back injury and listed appellant's complaint of persistent pain and discomfort over the lumbar area with limited motion of the lumbar spine. He diagnosed low back pain with a herniated nucleus pulposus at L4-5 with spinal canal compromise. In reports dated November 12 and December 10, 2001, Dr. Luis R. Pagan, a Board-certified neurologist, noted a history of appellant's lifting injury on September 21, 2001 and diagnosed myofascial syndrome and disc location without radiculopathy. He recommended physical therapy, but advised that there was no need for surgical intervention at that time. The physician's note of December 10, 2001 indicated that appellant experienced back pain. Appellant submitted a statement on November 15, 2001 which provided a detailed explanation of how his injury occurred and his subsequent medical treatment.

In a December 17, 2001 decision, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that appellant sustained an injury on September 21, 2001 as required by the Federal Employees' Compensation Act.<sup>1</sup>

In a letter dated January 8, 2001, appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 29, 2002. Appellant submitted a duplicate report from Dr. Pagan dated November 12, 2001. By decision dated November 22, 2002, the Office hearing representative affirmed the December 17, 2001 decision.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## LEGAL PRECEDENT

An employee seeking benefits under the Act 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 of the Act, that an injury was sustained 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 upon a traumatic injury or occupational disease.<sup>2</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>3</sup> The second component is whether the employment incident caused a personal injury and 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>4</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

## ANALYSIS

Appellant alleged that he sustained a back injury on September 21, 2001 as a result of lifting boxes while in the performance of duty. The Board finds that the evidence supports that appellant did lift boxes on September 21, 2001.<sup>7</sup>

The Board finds however that the medical evidence is insufficient to establish that appellant sustained a back condition causally related to his employment duties. Appellant submitted treatment notes from Dr. Corripio dated October 9 and 23, 2001, who indicated that appellant was treated for low back pain due to a lifting injury at work and diagnosed a lumbosacral sprain. Dr. Corripio did not provide a rationalized medical opinion addressing the causal relationship between appellant's back condition and the accepted lifting incident of September 21, 2001.<sup>8</sup> The reports from Dr. Corripio dated October 9 and 23, 2001, noted that appellant was lifting heavy boxes and injured his low back. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment duties. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Moreover, the form reports did not include a description of the nature of the back injury; no disc herniation at L4-5 was mentioned.

Also submitted were reports from Dr. Hueck dated October 11 to 17, 2001 which noted a history of appellant's injury, findings upon physical examination and advised that appellant could return to work with restrictions. These reports did not describe disc at L4-5 or provide a rationalized opinion regarding the causal relationship between appellant's back condition and the September 21, 2001 lifting incident.<sup>9</sup>

The reports from Dr. Balmir diagnosed low back pain and a herniated nucleus pulposus at L4-5 with spinal canal compromise. However, these notes do not contain any opinion as to the causal relationship between the diagnosed disc herniation and the September 21, 2001 lifting incident. Therefore, this report is insufficient to meet appellant's burden of proof.

Reports from Dr. Pagan on November 12 and December 10, 2001, noted a history of appellant's injury on September 21, 2001 and diagnosed myofascial syndrome and a disc location without radiculopathy. However, he did not provide any opinion regarding the cause of appellant's herniated disc condition. A medical report that does not contain a rationalized medical opinion is insufficient to meet appellant's burden of proof.<sup>10</sup>

The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. His own unsupported assertion of an employment relationship is not proof of the fact. In a case such as this, proof must include

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<sup>7</sup> The Board notes that at oral argument before the Board on September 14, 2004 counsel for the Director of the Office conceded that appellant was lifting boxes on September 21, 2001.

<sup>8</sup> See *Michael E. Smith*, *supra* note 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement.<sup>11</sup>

**CONCLUSION**

The Board therefore finds that appellant has not met his burden of proof in establishing that he sustained an employment-related back injury in the performance of duty.<sup>12</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> See *Margaret A. Donnelly*, 15 ECAB 40 (1963).

<sup>12</sup> See *Calvin E. King*, 51 ECAB 394 (2000).