

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

WILLIE L. HARRIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lawrenceville, GA, Employer**

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**Docket No. 04-1353
Issued: October 13, 2004**

Appearances:
Willie L. Harris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 26, 2004 which denied modification of an October 27, 2003 Office decision, which found that appellant did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on September 10, 2003.

FACTUAL HISTORY

On September 10, 2003 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1), alleging that on September 10, 2003 he injured his low back. He noted that he was instructed to go to the letter preparation area and lift trays. Appellant indicated that his back was already hurting and he sustained pain in the left low back. He stopped work on

September 10, 2003 and returned on September 14, 2003. In a separate statement dated September 10, 2003, appellant indicated that his back was hurting before he was told to do the job. Appellant indicated that, after a few minutes, he needed to seek medical attention. The employing establishment controverted the claim and indicated that appellant claimed that he was injured after he was instructed to report to the letter preparation area.

In reports dated September 10, 2003, Dr. Irene Ristic, a Board-certified family practitioner, indicated that appellant had chronic back pain, which was exacerbated. She indicated that appellant was unable to work until September 14, 2003 and prescribed limitations which included a week of modified or light work, no lifting over 10 pounds and no climbing, bending, or stooping.

By letter dated September 23, 2003, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail how the injury occurred and to provide dates of examination and treatment, a history of injury given by him to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

In a September 10, 2003 emergency room report, Dr. Ristic noted appellant's history of injury and indicated that appellant lifted a heavy object at work. She indicated that appellant had chronic back pain of two-year's duration, which was exacerbated. Accompanying this was an unsigned September 10, 2003 form report that described appellant's history of injury as an ongoing back injury which was worsened when appellant lifted something heavy at work.

In a September 16, 2003 disability certificate, Dr. Howard J. Williams, III, a Board-certified anesthesiologist, requested that appellant be excused from work on September 16, 2003 due to a doctor's appointment.

By decision dated October 27, 2003, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was insufficient to establish that the events occurred as alleged. Further, the Office found that the medical evidence was insufficient to establish that appellant's condition was caused by employment duties.

Appellant requested reconsideration on December 29, 2003.

In a December 15, 2003 report, Dr. Williams advised that appellant was bending and lifting trays at work and hurt his low back. In response to the question requesting a diagnosis, Dr. Williams indicated that an attached medical narrative contained his findings. However, no accompanying narrative report is of record.

By decision dated March 26, 2004, the Office denied modification of its October 27, 2003 decision. The Office found that appellant had not provided sufficient evidence to support

that he sustained a diagnosed medical condition as a result of a specific work incident on September 10, 2003.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 timely filed within the applicable time limitation period of the Act² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS

Appellant alleged that he hurt his back while lifting trays at work. There is no dispute that appellant lifted trays at work on September 10, 2003. The Board finds that the first component of fact of injury, the claimed incident -- lifting trays, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the lifting of trays caused a personal injury. The medical evidence contains no firm diagnosis, no rationale and no explanation of the mechanism of injury. Appellant provided reports from Drs. Ristic and Williams. However, neither doctor provided a specific opinion addressing whether any diagnosed condition was caused or aggravated by the lifting incident on September 10, 2003. Dr. Williams did not diagnose a specific condition or specifically address causal relationship. Dr. Ristic diagnosed an exacerbation of chronic low back pain but did not further elaborate on the cause and nature of the back pain. Dr. Ristic noted the history of the lifting incident at work and also reported that appellant had a preexisting history of back pain for

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

the preceding two years. She did not offer any explanation regarding why the employment would have caused or aggravated a particular condition in light of appellant's preexisting history of low back pain. Because the medical reports submitted by appellant do not address how the September 10, 2003 lifting incident caused or aggravated a low back injury, these reports are of limited probative value⁷ and are insufficient to establish that the September 10, 2003 employment incident caused or aggravated a specific injury.⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2004 and October 27, 2003 Office Workers' Compensation Programs decisions are hereby affirmed.

Issued: October 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

⁸ On appeal, appellant asserts that his claim should have been handled as a recurrence of disability. However, the record before the Board does not contain a decision pertaining to a claim for a recurrence of disability or any development of any other claimed injury. Consequently, the Board has no jurisdiction over any other issue. See 20 C.F.R. § 501.2(c) (the Board's jurisdiction is limited to reviewing final decisions of the Office).