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

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| **KULWINDER K. GILL, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1396** |
| | ) | **Issued: December 19, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, San Jose, CA, Employer** | ) | |

*Appearances:*
*Kulwinder K. Gill, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On June 21, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 19, 2005 merit decision which found that appellant did not establish an injury causally related to a February 28, 2005 employment incident. 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 is whether appellant sustained an injury in the performance of duty on February 28, 2005, as alleged.

### ***FACTUAL HISTORY***

On March 9, 2005 appellant, then a 36-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained pain in her left leg as a result of her federal duties. In an accompanying statement, appellant indicated that her pain was caused by bending and picking up heavy trays. The employing establishment controverted the claim. By letter

dated March 29, 2005, the Office requested further information, including a comprehensive medical report from a treating physician.

On March 30, 2005 appellant submitted a copy of her claim for compensation in California, which included a physician's report by Dr. Ramon Garcia, a Board-certified family practitioner, who noted that appellant told him that, while loading mail, she sustained pain in her left hip going down her leg. He diagnosed left-side sciatica. Dr. Garcia responded yes to the question, "Are your findings and diagnosis consistent with the patient's account of injury or onset of illness?" This report was accompanied by a duty status report dated March 22, 2005 in which Dr. Garcia indicated that appellant had physical restrictions with regard to her employment, but could resume work. Dr. Garcia also referred appellant to physical therapy. In a form dated April 6, 2005, he indicated that appellant returned to modified work on March 31, 2005 with limitations. In a report dated April 21, 2005, Dr. Garcia indicated that appellant returned to full duty on April 18, 2005.

Appellant also submitted a statement indicating that on February 28, 2005, while loading mail, she felt a pain in her left leg and hip.

By decision dated May 19, 2005, the Office adjudicated appellant's claim as a traumatic injury. It denied the claim, finding that, although appellant established that she sustained an incident in the performance of duty, the medical evidence did not establish that a medical condition resulted from this event.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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 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.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

[1] 5 U.S.C. §§ 8101-8193,

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

An employee may establish that the employment incident occurred as alleged, but fail to show that her disability and/or condition related to the employment incident.

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[5] An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[6] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[7] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[8]

## ***ANALYSIS***

Appellant alleged that she was loading mail on a particular date, February 28, 2005. Her claim is properly treated as a claim for traumatic injury.[9] The Office found that the incident on February 28, 2005 occurred at the time, place and in the manner alleged. The issue is whether she sustained injury caused by the employment incident.

In support of her claim, appellant submitted reports by Dr. Garcia. However, these notes merely indicated that he treated appellant for left-sided sciatica. Dr. Garcia did not provide a rationalized medical opinion addressing appellant's condition or relating it to the incident of February 28, 2005. Although he generally indicated that his findings were consistent with appellant's account of the injury, he did not provide any discussion addressing causal relationship. A mere check mark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[10] Dr. Garcia did not offer an opinion as to the cause of appellant's injury; he merely noted that the symptoms started while appellant was working. The mere appearance of a condition during appellant's employment does not raise an inference of causal relationship between the condition and the employment.[11]

There is insufficient medical evidence to establish that appellant sustained an injury on February 28, 2005. The Board finds that she failed to meet her burden of proof.

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[5] *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004); *William Nimitz*, 30 ECAB 567 (1979).

[7] *Nicolette R. Kelstrom*, 54 ECAB ____ (Docket No. 03-275, issued May 14, 2003).

[8] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004); *Jamel A. White*, 54 ECAB ___ (Docket No. 02-1559, issued December 10, 2002).

[9] *See* 20 C.F.R. § 10.5(ee), 10.5(q).

[10] *See Gary J. Watling*, 52 ECAB 278 (2001).

[11] *Shirley A. Temple*, *supra* note 4.

## ***CONCLUSION***

The Board finds that appellant failed to establish that she sustained a medical condition in the performance of duty on February 28, 2005, as alleged.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 19, 2005 is affirmed.

Issued: December 19, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board