

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

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**NORMAN W. CALK, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Louis, MO, Employer**

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**Docket No. 04-2173  
Issued: February 1, 2005**

*Appearances:*  
*Norman W. Calk, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On September 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 14, 2004 finding that he did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 31, 2003. 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 to establish that he sustained an injury in the performance of duty on March 31, 2003.

**FACTUAL HISTORY**

On June 18, 2003 appellant, then a 64-year-old mail carrier, filed a traumatic injury claim alleging that he sustained a hernia in his upper stomach on March 31, 2003 when he stretched from behind the steering wheel of his vehicle to lift and place mail and small packages in boxes.

Appellant began to work in a limited-duty position shortly after March 31, 2003 due to complaints of shoulder pain and stopped work on May 12, 2003.

In a statement dated June 18, 2003, a supervisor stated that March 31, 2003 was the first day appellant had worked after being off work for a year due to shoulder surgery. He indicated that appellant reported that he had undergone a hernia operation 15 years prior. In an undated supplemental statement received by the Office in July 2003, appellant further described the progression of his medical condition and noted that he also had to reach above his head to place mail in mailboxes outside his vehicle while he delivered mail for four hours on March 31, 2003.

Appellant submitted a form report dated May 28, 2003 in which Dr. Nissage Cadet, a Board-certified surgeon for the employing establishment, indicated that he reported having a Nissen fundoplication (a type of hernia operation) in 1988 and was doing well until recently when he noticed a bulge and pain. Dr. Cadet listed the date of injury as March 31, 2003, diagnosed ventral incisional hernia, and checked a box indicating that the condition found was caused or aggravated by an employment activity. He also stated, "Because of prior abdominal surgery patient is prone to develop incisional hernia especially if his work requires heavy lifting." Dr. Cadet indicated that appellant underwent surgery to repair his ventral incisional hernia and would need six to eight weeks for complete recovery "[b]ecause his condition was in part, at least, aggravated or caused by increased abdominal pressure due to heavy lifting or strenuous activity."<sup>1</sup>

By decision dated July 29, 2003, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on March 31, 2003. The Office accepted the occurrence of the employment incidents on March 21, 2003 as alleged, but determined that appellant did not submit rationalized medical evidence or rationale establishing a causal relationship between the accepted employment factors and the claimed injury.

Appellant submitted an October 2, 2003 letter in which Dr. Myrna I. Gover-Munoz, an attending Board-certified internist, indicated that she saw him on April 24, 2003 at which time he complained of a possible abdominal hernia. Dr. Gover-Munoz stated that appellant reported that he noticed an abdominal bulge and pain when driving for eight hours and using his right arm for four hours after returning to work. She indicated that appellant had experienced these symptoms for three weeks prior to April 24, 2003 and noted that he also reported that the pain became worse with activity. Dr. Gover-Munoz noted that she did not "go into the details of the injury mechanics or the date it commenced" when she spoke to appellant on April 24, 2003. She further stated:

"My recollection of the conversations is that he had to drive and stretch his body to deliver mail all day long and in doing so he noted pain in the epigastric area, which later we diagnosed as a Ventral Hernia. The body mechanics described are

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<sup>1</sup> The record also contains a May 3, 2003 "consult result" report, which contains a diagnosis of ventral incisional hernia and indicates that appellant reported having pain and a bulge for the last few weeks at a prior surgical incision site especially when engaging in "heavy lifting and strenuous activity." The report is not signed but it appears to have been produced by Dr. Cadet.

consistent with the development of the hernia, especially since he had a prior surgery in that area that increased his risk.”

Appellant also submitted statements of members of the martial arts class for which he was an assistant instructor. Several of the witnesses stated that appellant advised them in April 2003 that he had been injured at work.

By decision dated January 14, 2004, the Office affirmed its July 29, 2003 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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 Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 he actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on March 31, 2003.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>5</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>7</sup> *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

Appellant submitted a form report dated May 28, 2003 in which Dr. Cadet, a Board-certified surgeon for the employing establishment, listed the date of injury as March 31, 2003, diagnosed ventral incisional hernia, and checked a box indicating that the condition found was caused or aggravated by an employment activity.<sup>8</sup> He also generally indicated that appellant's condition was caused or aggravated by "increased abdominal pressure due to heavy lifting or strenuous activity." This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Cadet did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>9</sup> He did not provide any accurate description of the employment activities which appellant implicated as causing his condition, including stretching from behind the steering wheel of his vehicle to lift and place mail and small packages in boxes and reaching above his head to place mail in mailboxes outside his vehicle on March 31, 2003. Dr. Cadet suggested that appellant engaged in "heavy lifting" which caused or aggravated his condition, but he did not explain what he meant by the term heavy lifting and it has not been accepted that the mail and packages appellant lifted were of a great weight.<sup>10</sup> Dr. Cadet suggested that appellant's prior hernia operation made him susceptible to having another hernia injury, but he did not explain why some other physical actions other than the events of March 31, 2003, or even a spontaneous return of hernia problems, could have been responsible for appellant's condition in early to mid 2003.

Appellant also submitted an October 2, 2003 letter in which Dr. Gover-Munoz, an attending Board-certified internist, indicated that she saw him on April 24, 2003 at which time he complained of an abdominal bulge and pain for three weeks. She indicated that appellant reported that he first noticed the symptoms when driving for eight hours and using his right arm for four hours after returning to work. She stated that the fact that appellant "had to drive and stretch his body to deliver mail all day long" was consistent with the development of a ventral hernia, especially since he had a prior surgery in that area that "increased his risk." However, Dr. Gover-Munoz's opinion is also lacking adequate medical rationale in support of its opinion on causal relationship. Her report does not contain an adequate description of appellant's activities on March 31, 2003. For example, there is no clear description of the types of body movements appellant made, the weights of the objects he lifted, and so forth. She did not provide any explanation of the medical process through which appellant could have sustained a hernia condition due to the activities on that date. Moreover, Dr. Gover-Munoz also failed to explain why appellant's ventral incisional hernia was not due to some other cause. She suggested that the fact that appellant reported experiencing symptoms on March 31, 2003 established the necessary causal relationship, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>11</sup> or that work activities produce

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<sup>8</sup> He also stated, "Because of prior abdominal surgery patient is prone to develop incisional hernia especially if his work requires heavy lifting."

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> Appellant noted that he was restricted from lifting more than 15 pounds.

<sup>11</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

symptoms revelatory of an underlying condition<sup>12</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.<sup>13</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 31, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>12</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>13</sup> Appellant submitted several witness statements which described his reporting of a claimed employment injury, but the issue of the present case is medical in nature and must be resolved by medical evidence.