

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

---

**JAMES J. TUCKER, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Minneapolis, MN, Employer**

---

)  
)  
)  
)  
)  
)  
)

**Docket No. 05-124  
Issued: March 8, 2005**

*Appearances:*  
*James J. Tucker, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On October 12, 2004 appellant filed a timely appeal of a July 7, 2004 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury while in the performance of duty. 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 has established that he sustained an injury while in the performance of duty.

**FACTUAL HISTORY**

On January 13, 2004 appellant, then a 56-year-old building equipment mechanic, filed a traumatic injury claim alleging that on October 27, 2003 he sustained a pinched nerve in his back while pushing a loaded bulk mail center container off an elevator. He stated that the wheel of the container got caught in the threshold of the elevator door and suddenly stopped.

In support of his claim, appellant submitted an April 15, 2004 magnetic resonance imaging (MRI) scan report by Dr. John W. Steely, a Board-certified radiologist, which revealed degenerative disc changes at C6-7, C5-6 and C4-5. At C6-7, Dr. Steely reported a shallow broad-based and left-sided disc protrusion and osteophytes associated with left-side foraminal narrowing and probable impingement of the left C7 nerve root. At C5-6, he found left greater than right foraminal narrowing consistent with unciniate process spurring and mild disc bulging. Dr. Steely stated that at C4-5 there was foraminal narrowing bilaterally left greater than the right due to unciniate process spurring. He concluded that there was no evidence of intradural pathology and central stenosis.

By letter dated June 1, 2004, the Office advised appellant that additional information was needed to process his claim. The Office requested that he submit a medical report from his attending physician on an enclosed Form CA-20.

Appellant submitted a June 28, 2004 Form CA-20 completed and signed by Dr. Thomas G. Mayer, a Board-certified family practitioner. He provided a history that on October 22, 2003 appellant hurt his left upper arm and experienced pain, numbness and tingling. He stated that no triggering event was noted. Dr. Mayer noted that appellant was working as a building equipment mechanic while loading and unloading a container on November 22, 2004. Dr. Mayer indicated with an affirmative mark that appellant's left shoulder/arm pain was caused by the employment activity.

By decision dated July 7, 2004, the Office found the evidence of record sufficient to establish that the work incident occurred, but insufficient to establish that appellant sustained a medical condition causally related to the accepted event. Accordingly, the Office denied his claim.<sup>1</sup>

### **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 filed within applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each

---

<sup>1</sup> Following the Office's July 7, 2004 decision, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>4</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 or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>8</sup>

### ANALYSIS

In this case, there is no dispute that on October 27, 2003 appellant was pushing a bulk mail center container while working at the employing establishment. The Board finds, however, that the medical evidence of record is insufficient to establish that this incident caused an injury. Dr. Steely's MRI scan report failed to address the causal relationship between the October 27, 2003 employment incident and the diagnoses of a shallow broad-based and left-sided disc protrusion and osteophytes associated with left-side foraminal narrowing and probable impingement of the left C7 nerve root at C6-7, foraminal narrowing consistent with uncinat process spurring left greater than right and mild disc bulging at C5-6 and foraminal narrowing bilaterally left greater than the right due to uncinat process spurring at C4-5.

Dr. Mayer's report provided a date of injury as October 22, 2003. He indicated that appellant was working as a building equipment mechanic when he experienced left upper arm pain, numbness and tingling while loading and unloading a container on November 22, 2004. Dr. Mayer stated that no triggering event was noted. He indicated with an affirmative mark that appellant's left shoulder/arm pain was caused by the employment activity. The Board finds that this report does not provide any medical rationale explaining how or why appellant's condition

---

<sup>4</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> See also, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *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).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

was caused by the accepted employment incident and, therefore, the report is insufficient to establish his claim. This type of report, without more by way of medical rationale explaining how the incident caused the injury is insufficient to establish causal relationship and is of diminished probative value.<sup>9</sup> Dr. Mayer's reference to appellant's left shoulder/arm pain is insufficient to establish a causal relationship of his pain and the accepted employment incident. He did not provide an accurate factual background with regard to the date of injury as appellant alleged that he sustained a back injury on October 27, 2003 but the doctor noted October 22, 2003 and November 22, 2004 as the dates of injury. As the Board has held, medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim.<sup>10</sup>

As there is no rationalized medical evidence of record establishing that appellant sustained a back injury in the performance of duty as alleged, the Board finds that he has failed to meet his burden of proof.

### **CONCLUSION**

As appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the October 27, 2003 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

---

<sup>9</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>10</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member