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

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| **JORGELINA I. GUEVARA, Appellant** | ) | |
| **and** | ) | **Docket No. 05-147** |
| | ) | **Issued: March 21, 2005** |
| **U.S. POSTAL SERVICE, DYKER HEIGHTS STATION, Brooklyn, NY, Employer** | ) | |

*Appearances:*
*Thomas S. Harkins, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

### ***JURISDICTION***

On October 18, 2004 appellant filed a timely appeal of a July 30, 2004 merit decision of the Office of Workers' Compensation Programs, denying modification of a June 4, 2003 decision which found that she 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 she sustained an injury while in the performance of duty.

### ***FACTUAL HISTORY***

On October 10, 2002 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim, received by the Office on April 21, 2003, in which she alleged that on October 9, 2002 she hurt her back while pushing a mail cart. Appellant stated that she experienced a burning sensation and severe pain in her lower back. She stopped work on October 9, 2002. Appellant

submitted an undated narrative statement in which she described how she hurt her back on October 9, 2002 and the medical treatment she received. She also submitted employment records regarding her detail work assignment, an earnings and leave statements and correspondence from the employing establishment concerning her request to change her craft position to a clerk so that she could return to work.

A November 5, 2002 note from her physical therapist addressed her back treatment. The October 16, 2002 treatment note of Dr. Yeoman Chan, a Board-certified family practitioner, indicated that appellant was released to return to work on October 20, 2002. In October 21 and 28 and December 13, 2002 treatment notes, he indicated that she was treated for low back pain and sciatica and that she was disabled for work. The February 3 and 27, 2003 medical treatment notes of a physician whose signature is illegible reflect that appellant was being treated for low back derangement and a herniated disc and was found disabled for work. In a March 13, 2003 treatment note, Dr. Roberto H. Anon, a Board-certified internist, stated that appellant had severe sacrolitis mostly on the right and that she could not work at that time.

The employing establishment controverted appellant's claim on the grounds that she did not submit the claim form to its office until April 7, 2003. The employing establishment also contended that she did not seek contemporaneous medical attention. Statements from employing establishment supervisors indicated that appellant did not report that she sustained an employment-related injury on October 9, 2002.

By letters dated April 23, 2003, the Office advised appellant that additional factual and medical information was needed to process her claim. The Office noted that she had a preexisting back condition and requested a rationalized medical report from her attending physician explaining the causal relationship between her low back condition and work duties on October 9, 2002.

Appellant submitted Dr. Anon's May 1, 2003 treatment note in which he indicated that he had been treating appellant since March 13, 2003 for a lumbar sprain and low back pain. He noted that she attributed the sprain to an injury at work on October 9, 2002. Dr. Anon stated that she was not able to work at that time. She also submitted Dr. Chan's October 16 and 21, 2002 progress notes which indicated that she experienced low back pain.

By decision dated June 4, 2003, the Office found that appellant was performing her work duties on October 9, 2002 but the medical evidence was insufficient to establish that she sustained a medical condition causally related to the accepted employment incident. Accordingly, the Office denied her claim.

In a May 18, 2004 letter, appellant, through her attorney, requested reconsideration, contending that the evidence of record was sufficient to establish an injury was sustained while in the performance of duty on October 9, 2002.

In an undated treatment note, Dr. Richard A. Fazio, a Board-certified internist stated that appellant experienced rectal bleeding which stemmed from straining while lifting and pushing heavy weight. A February 7, 2001 treatment note indicated that appellant underwent a flexible fiberoptic proctosigmoidoscopy for fissure hemorrhoids. On August 28, 2001 Dr. Fazio reported

a diagnosis of hemorrhoids and listed her physical restrictions for light-duty work. In a January 30, 2002 report, he provided a history that appellant experienced recurrent rectal bleeding from straining and lifting at work. Dr. Fazio reported findings on physical examination and diagnosed hemorrhoid disease secondary to lifting and straining. He indicated that appellant could engage in limited physical activities such as lifting. In a February 6, 2002 report, Dr. Fazio reiterated the diagnosis and stated that she could not carry or lift more than 20 pounds. On April 10, 2002 he found her fit for duty with no restrictions because she had changed her job position.

The December 21, 2001 report and February 8 and April 2002 treatment notes of a physician whose signature is illegible noted that appellant experienced bleeding and could perform light-duty work with the restriction of lifting no more than 20 pounds.

The October 3 and November 24, 2003 treatment notes of Dr. Henry M. Tischler, a Board-certified orthopedic surgeon, listed a history of the October 9, 2002 employment incident and appellant's medical background. He reported his findings on physical examination and diagnosed lumbosacral radiculopathy and disc disease. On January 5, 2004 he stated that appellant could not lift more than 5 or 10 pounds, stand for more than 1 hour, crawl or climb or go up or down stairs. He further stated that she could walk about two to three blocks. In a January 15, 2004 report, he recommended that appellant undergo an electromyogram (EMG) study. Dr. Tischler stated that she was limited to lifting between 5 to 10 pounds on a regular basis and that she could not sit or stand for any length of time noting that the maximum time period was 45 minutes and then she would have to move around for 10 to 15 minutes. He further stated that she could only ambulate about two to three blocks without stopping and she had problems with stairs. Dr. Tischler opined that appellant had been disabled since the October 9, 2002 employment incident and continued to complain of low back pain and numbness. He believed an EMG would help to define better the location from which the problem stemmed. Dr. Tischler stated that, without the EMG and review of prior medical records, he could not give an opinion as to whether appellant's condition was temporary or permanent.

In a March 3, 2003 report, Dr. Allen Goodman, a Board-certified radiologist, reported the findings of a magnetic resonance imaging (MRI) scan of the lumbar spine. He found no disc bulges or herniations and stated that there appeared to be slight anterior spondylolisthesis at L5-S1. Dr. Goodman suspected bilateral spondylosis at L5 and recommended correlation with oblique plan x-rays of L5-S1.

By decision dated July 30, 2004, the Office denied modification of the June 4, 2003 decision, finding the medical evidence of record insufficient to establish that she sustained an injury causally related to the October 9, 2002 employment incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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

[1] 5 U.S.C. §§ 8101-8193.

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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[3]

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.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she 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.[5] 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.[6] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[7]

## ***ANALYSIS***

The Office accepted that on October 9, 2002 appellant was pushing a mail cart while working at the employing establishment. The Board finds that the medical evidence of record is insufficient to establish that this incident caused an injury.

The treatment notes from Dr. Chan and Dr. Anon provided a diagnosis of low back pain, sciatica, low back derangement, herniated disc and sacrolitis. They indicated that appellant was disabled for work. However, the reports fail to address whether her conditions and disability were causally related to the October 9, 2002 employment incident. These treatment notes are insufficient to establish her claim. The February 3 and 7, 2003 treatment notes by preparers whose signatures are illegible are of no probative value as the identity of the individual who prepared the reports cannot be determined. Similarly, the treatment notes of the physician whose

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *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).

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

signature is illegible, do not constitute competent medical evidence as his or her identity cannot be determined.[8] These treatment notes are insufficient to establish that appellant sustained an injury while in the performance of duty.

Dr. Goodman's March 2003 MRI scan report found no evidence of disc bulges or herniations but he suspected bilateral spondylosis at L5-S1. As a diagnostic study, Dr. Goodman did not address whether the findings were causally related to the October 9, 2002 employment incident. As such, this report is not sufficient to establish the claim.[9]

Dr. Anon's May 1, 2003 treatment note provided a diagnosis of lumbar sprain. He noted that appellant attributed her condition to the October 9, 2002 employment but did not provide an explanation supporting causal relationship. Without medical rationale explaining how and why the diagnosed condition was causally related to the October 9, 2002 employment incident, his treatment note is insufficient to establish the claim.[10]

Dr. Fazio's treatment records indicated that appellant had hemorrhoid fissures due to straining while lifting and pushing heavy weight at work and that she could perform light-duty work with certain restrictions. The Board finds this evidence is not directly relevant to the claim, which is for a low back condition. Dr. Fazio did not explain any causal relationship between appellant's hemorrhoid condition and the burning sensation she stated that she experienced during the October 9, 2002 employment incident.[11]

Dr. Tischler's treatment notes and report provided a diagnosis of lumbosacral radiculopathy and disc disease. He did not address whether the diagnosed conditions were caused by the October 9, 2002 employment incident. Although Dr. Tischler opined that appellant had been disabled since the October 9, 2002 employment incident, he noted that additional medical information was necessary to substantiate her complaints of low back pain and numbness. The Board notes that he stated that diagnostic studies needed to be performed to assess appellant's condition. His opinion on causal relationship is speculative and of diminished probative value.[12]

The treatment note from appellant's physical therapist does not constitute competent medical evidence since a physical therapist is not considered a "physician" under the Act.[13] Thus, it is insufficient to establish her burden of proof.

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[8] *Id.*

[9] *See Michael E. Smith*, 50 ECAB 313 (1999).

[10] *Carol S. Masden*, 54 ECAB ___ (Docket No. 02-1667, issued January 8, 2003) (the Board held that to be highly probative, a physician's opinion must be based on a complete medical and factual background of reasonable medical certainty and supported by medical rationale).

[11] *Id.*

[12] *See Brian E. Flescher*, 40 ECAB 532 (1989).

[13] 5 U.S.C. §§ 8101-8193, 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994).

As there is no rationalized medical evidence of record establishing that appellant sustained a back injury on October 9, 2002 as alleged, she has failed to meet her burden of proof.

## ***CONCLUSION***

As appellant did not provide the necessary medical evidence to establish that she sustained an injury caused by the October 9, 2002 employment incident, the Board finds that she has failed to satisfy her burden of proof in this case.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member