

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

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**SCOTT M. THOMAS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Napa, CA, Employer**

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**Docket No. 04-2241  
Issued: November 7, 2005**

*Appearances:*  
*Scott M. Thomas, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On September 15, 2004 appellant filed a timely appeal of an August 31, 2004 merit decision of the Office of Workers' Compensation Programs that found he had not established that he sustained an injury on June 4, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant sustained an injury to his low back on June 4, 2004, as alleged.

**FACTUAL HISTORY**

On July 14, 2004 appellant, then a 50-year-old letter carrier, filed a claim for compensation for a traumatic injury allegedly sustained on June 4, 2004 when he caught his left foot on a termite stake in a customer's yard. He claimed that this resulted in a low back strain that caused pain to travel to his testicles. The employing establishment reported that appellant did not stop work, and that he first obtained medical care on June 8, 2004. Appellant submitted a

July 12, 2004 note from Dr. Karl E. Molin, Jr. indicating that he could work 5 hours per day for the next 10 days. On July 19, 2004 the employing establishment offered appellant limited duty, which he accepted.

By letter dated July 27, 2004, the Office advised appellant that the evidence was insufficient to establish his claim because it did not establish that he actually experienced the incident alleged to have caused his injury, no condition was diagnosed, and there was no physician's opinion of how the injury resulted in the diagnosed condition. Appellant submitted a July 27, 2004 report from Dr. Molin that listed clinical findings of left low back and groin pain, and diagnoses due to injury of low back and hip strain.

By decision dated August 31, 2004, the Office found that appellant had not established that a medical condition existed for which compensation was claimed, and that fact of injury was not established.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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.<sup>5</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>6</sup> The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>7</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

<sup>3</sup> *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Daniel R. Hickman*, *supra* note 2.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.<sup>8</sup>

### **ANALYSIS**

Appellant was an employee of the United States on June 4, 2004, and filed a timely claim. There is no reason to believe that the June 4, 2004 incident did not occur as stated by appellant on his claim form. The hazard on which he claimed to have been injured is one that could reasonably be expected to encounter while delivering mail and the employing establishment did not contest the occurrence of the incident. As there is no evidence refuting that the incident occurred as alleged, the Board finds that appellant's statements are sufficient to establish that it did.<sup>9</sup>

Appellant has not met his burden of proof for the reason that the medical evidence does not establish that the June 4, 2004 incident caused the condition of low back and hip strain diagnosed by Dr. Molin in his July 27, 2004 report. As Dr. Molin's reports do not contain a history of the June 4, 2004 incident, the doctor's listing of low back and hip strain as diagnoses due to the injury cannot meet appellant's burden of proving that the June 4, 2004 incident caused the condition claimed, a low back strain.

### **CONCLUSION**

The Board finds that the medical evidence is insufficient to meet appellant's burden of proof.

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<sup>8</sup> *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>9</sup> An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *Thelma Rogers*, 42 ECAB 866 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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