

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

MAXIMILIANO GUZMAN, Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Pico Rivera, CA, Employer**)

**Docket No. 06-382
Issued: April 6, 2006**

Appearances:
Maximiliano Guzman, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 8, 2005 appellant filed a timely appeal from the May 5 and October 6, 2005 merit decisions of the Office of Workers' Compensation Programs, which denied his claim that he sustained an injury in the performance of duty on February 9, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 9, 2004.

FACTUAL HISTORY

On March 9, 2004 appellant, then a 44-year-old distribution clerk, filed a claim alleging that he injured his left leg in the performance of duty on February 9, 2004 while pulling a case of flats. The Office requested additional information, including his doctor's opinion on causal relationship: "Your doctor must provide the medical evidence and explain how your

employment has specifically caused or contributed to your condition(s) or altered any preexisting one(s).”

Dr. Thomas Roccapalumbo, an osteopath, examined appellant on March 9, 2004. He diagnosed lumbar radiculopathy and indicated that appellant’s findings and diagnosis were consistent with the history of injury: “Patient states that he has been having pain since February 9, 2004 while pulling flats at work.” A radiology examination on March 9, 2004 showed moderately advanced discogenic disease at L5-S1 with anterior spurring.

In a decision dated May 10, 2004, the Office denied appellant’s claim. The Office found that the evidence submitted was insufficient to establish the circumstances of the incident alleged, the nature and extent of his medical condition and its specific relationship to the employment incident.

Following an oral hearing before an Office hearing representative, appellant submitted a March 28, 2005 report from Dr. Thai T. Do, a consulting specialist in occupational medicine. He related appellant’s history of injury, chief complaints and findings on examination. He diagnosed low back strain with sciatica, symptoms resolved. He offered no discussion of causal relationship.

In a decision dated May 5, 2005, the Office hearing representative affirmed the denial of appellant’s claim. She found that the incident occurred as alleged but that appellant submitted no evidence to establish a causal relationship to his low back condition.

Appellant requested reconsideration and submitted an addendum from Dr. Do stating:

“The patient sustained an injury to the low back after pulling a case of flats. The patient states the case was heavy and weighed more than 500 [pounds]. It is my opinion that his symptoms and physical examination are consistent with the history of the injury that patient has given.”

In a decision dated October 6, 2005, the Office denied modification of the May 5, 2005 decision. The Office explained that Dr. Do did not provide or explain a clear and convincing nexus between the claimant’s diagnosed medical conditions and the incident that occurred on February 9, 2004.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish

¹ 5 U.S.C. §§ 8101-8193.

that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

ANALYSIS

The incident on February 9, 2004 is not in dispute. The Office accepts that appellant has submitted sufficient evidence to establish that he experienced a specific event or incident occurring at the time, place and in the manner alleged. The only question to be resolved is whether this work incident or activity caused or contributed to his diagnosed low back condition.

Appellant has submitted medical opinions from Dr. Roccapalumbo and Dr. Do. Both physicians reported that appellant's lumbar radiculopathy or low back strain with sciatica, was "consistent" with pulling a case of flats at work. But neither physician explained why. The physicians provide their conclusion as to the causal relationship of the claimed condition to pulling flats. A physician who flatly states or indicates with an affirmative mark that the diagnosed condition is causally related to the incident in question, without supporting rationale for the basis for such conclusion has not provided probative medical opinion.⁷ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. That is what is missing from this case. Appellant's physicians did not discuss the significance of the March 9, 2004 radiology report showing moderately advanced discogenic disease at L5-S1 with anterior spurring. They did not address the biomechanics of the activity in question or otherwise attempt to explain how that activity affected appellant's low back from a medical perspective, causing his symptoms and complaints. They did not explain how clinical findings supported their view.

While it is no stretch to imagine that appellant injured his low back on February 9, 2004, as alleged, appellant's claim must be adjudicated on the evidence submitted. In this case, the

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(ee) (1999) ("traumatic injury" defined).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ See *Robert S. Winchester*, 54 ECAB 191 (2002).

evidence falls short because there is no meaningful medical discussion of causal relationship. The Board will therefore affirm the denial of appellant's claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on February 9, 2004. The medical opinion evidence is insufficient to establish that the incident or activity on February 9, 2004 caused or contributed to his diagnosed low back condition.

ORDER

IT IS HEREBY ORDERED THAT the October 6 and May 5, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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