

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

J.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Iron Mountain, MI, Employer**

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**Docket No. 05-1877
Issued: August 21, 2006**

Appearances:

*Alan Shapiro, Esq., for the appellant
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 September 12, 2005 appellant filed a timely appeal of a June 27, 2005 decision of the Office of Workers' Compensation Programs denying her claim for compensation. 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 has established an injury in the performance of duty on July 14, 2004.

FACTUAL HISTORY

On July 14, 2004 appellant, then a 53-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her back "when bending to throw [mail] in box section" on that date. She felt something pop in her back and had tingling and numbness in her leg. Appellant submitted duty status reports (Form CA-17) dated July 14 and August 11, 2004, which appear to

be signed by a nurse practitioner.¹ A July 2, 2004 treatment note from Dr. Waldo Carlson, an internist, reported a long-standing history of back pain with an exacerbation at work on June 23, 2004.²

By decision dated September 27, 2004, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient to establish the claim. Appellant requested reconsideration and submitted a July 21, 2004 treatment note from Dr. Bruce Baranski, an internist. Dr. Baranski reported a history that appellant had low back pain due to an injury bending at work approximately a week earlier. An August 25, 2004 treatment note from him indicated that appellant had back surgery in 1988 and stated that appellant had a back injury while pushing a cage full of mail in July. Dr. Baranski noted that appellant continued to have back pain that had begun to improve. He reported back pain, right sciatica in a September 28, 2004 Form CA-17. In response to a question as to “diagnosis due to injury” he responded “yes.”

In a decision dated December 30, 2004, the Office affirmed the September 27, 2004 decision. Appellant again submitted a request for reconsideration and the evidence submitted included a report dated April 18, 2005 from Dr. Baranski who noted that appellant was initially treated for back pain that began on June 23, 2004. Dr. Baranski stated that appellant was seen “for back pain following another injury to the back” on July 14, 2004. He indicated that a magnetic imaging resonance scan revealed a small L5 laminotomy defect and Grade 1 retrolisthesis of L5 upon S1. Dr. Baranski opined that appellant’s “original injury and her subsequent injury in July 2004 were more likely than not caused by work-related activity. The injuries were likely related since the symptoms and the location of pain were similar. The etiology of appellant’s back pain is likely a combination of muscle injury and nerve compromise at the L5-S1 level as this would fit best with the anatomic location.”

By decision dated June 27, 2005, the Office denied modification of the December 30, 2004 decision. It found that the medical evidence of record was not sufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of 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/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential

¹ The record contains an investigative report from the employing establishment Office of Inspector General (OIG) regarding the CA-17 forms.

² Appellant filed a separate claim for injury on June 23, 2004.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.⁶

ANALYSIS

The Office does not appear to contest that an incident occurred as alleged on July 14, 2004. Appellant stated that she was bending over to throw mail and felt a pop in her back. The denial of the claim is based on the lack of medical evidence that is of sufficient probative value to establish an injury causally related to the employment incident. The duty status reports from a nurse practitioner are of no probative medical value.⁷ Dr. Baranski provided a treatment note dated July 21, 2004 reporting a history of back pain due to a bending injury, without providing a firm diagnosis or other detail regarding the injury. His treatment note of August 25, 2004 reported a July injury resulting from pushing a cage of mail. The treatment notes do not provide a consistent and accurate history or a reasoned medical opinion on causal relationship between a diagnosed condition and the July 14, 2004 employment incident.

The April 18, 2005 narrative report provides a brief history of an employment incident on June 23, 2004 and “another injury to the back” on July 14, 2004. The Board notes that the record indicated a long-standing history of back problems and the April 18, 2005 report does not provide a detailed medical history or a clear explanation of the July 14, 2004 employment incident. Moreover, it does not provide a reasoned medical opinion between a diagnosed condition and the July 14, 2004 employment incident. Dr. Baranski refers to both an original injury and a subsequent injury in July 2004, without providing a clear diagnosis of an injury resulting from the July 14, 2004 incident with accompanying explanation. In the absence of an accurate factual and medical history, a diagnosis and a reasoned medical opinion on causal relationship, the Board finds that the evidence of record is not sufficient to meet appellant’s burden of proof in this case.

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

⁵ See *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

⁷ Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion. See *Janet L. Terry*, 53 ECAB 570, 578 (2002). See 5 U.S.C. § 8101(2) for the meaning of “physician” under the Act.

CONCLUSION

Appellant did not meet her burden of proof to establish an injury in the performance of duty on July 14, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27, 2005, December 30 and September 27, 2004 are affirmed.

Issued: August 21, 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