United States Department of Labor
Employees' Compensation Appeals Board

F.P., Appellant	)	
and	)	**Docket No. 06-1969**
	)	**Issued: December 12, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Greenville, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 23, 2006 appellant filed a timely appeal from the January 27 and May 18, 2006 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a low back injury while in the performance of duty on November 30, 2005.

FACTUAL HISTORY

On December 5, 2005 appellant, a 59-year-old rural mail carrier, filed a traumatic injury claim alleging that on November 30, 2005 he injured his lower back when he bent over to pick up letters that had fallen to the floor. On December 12, 2005 the employing establishment controverted appellant's claim, contending that he had failed to establish a causal relationship between his alleged injury and factors of his employment. On December 21, 2005 the Office

advised appellant that the information submitted was insufficient to establish his claim. The Office allowed him 30 days to submit additional information, including a detailed account of his alleged injury and a physician's report, with a diagnosis and an opinion as to the cause of the diagnosed condition.

In a December 5, 2005 duty status report, Dr. Jack Harless, a chiropractor, indicated that appellant sustained an injury to his lower back while bending over to pick up mail; however, he did not provide a date of injury. Dr. Harless provided a diagnosis of lumbar sprain/strain due to the alleged incident. In a December 6, 2005 work slip, he stated that appellant was able to return to work.

Postmaster Ron Simon submitted a narrative statement dated December 5, 2005, reflecting appellant's description of his alleged injury. On December 1, 2005 appellant reported that he had experienced intense pain in his back while on his route on November 30, 2005. When Mr. Simon asked whether something specific had occurred on his route, appellant stated that he did not think so and that his back had been hurting for some time. On December 5, 2005 appellant told Mr. Simon that he had sustained an "on-the-job" injury.

In a statement dated December 5, 2005, appellant indicated that, at approximately 9:30 a.m. on November 30, 2005, he "felt something happen" to his back when he bent to pick up mail that had fallen to the floor. Before he loaded his car that morning, he informed his supervisor that his back was bothering him and that he did not know whether he would be able to complete his route. By the end of appellant's route, his pain was excruciating. A city carrier assisted him to his car and he immediately went to Harless Chiropractic for treatment.

In a December 5, 2005 narrative statement, Robin L. Behr, a coworker, reported that on the morning in question appellant advised him that he was having back trouble. At approximately 5:00 p.m., appellant returned from his route in obvious pain. He denied that he had injured his back on his route, stating that he had been having trouble with his back for a while. Mr. Behr overheard appellant tell his physician that he was experiencing back pain and that he believed that "it was his sciatic nerve again."

On January 23, 2006 appellant stated that he "felt a twitch in the lower back" when he picked up papers that had fallen to the floor on November 30, 2005. He indicated that he had been treated by a chiropractor and by Dr. Dennis E. McClure, a Board-certified neurological surgeon.

In a January 27, 2006 decision, the Office denied appellant's claim. It found that the evidence submitted was insufficient to establish that appellant had sustained an injury under the Federal Employees' Compensation Act on November 30, 2005.

On February 16, 2006 appellant submitted a request for reconsideration and a narrative statement dated February 6, 2006. He stated that he had experienced soreness in his lower back prior to the November 30, 2005 incident and initially believed his back pain was due to a previous November 30, 1989 back injury. By the time appellant returned from his route on

November 30, 2005, his pain was severe. He stated that he was absolutely sure that his injury occurred in the office and that he increased the severity of the injury by delivering his route.

In a report dated January 10, 2006, Dr. McClure stated that appellant's pain began on November 30, 2005 after he picked up letters from the floor. Sensing that an injury had occurred at that time, his pain increased throughout the day. X-rays of the lumbar spine showed mild evidence of degenerative disc disease. Appellant was able to walk on his heels and toes. He was limited from the floor on forward bending at five inches. Straight leg raising was 80 degrees on the right and 90 degrees on the left. Dr. McClure recommended that appellant undergo a magnetic resonance imaging (MRI) scan. A January 13, 2006 report of an MRI scan of the lumbar spine revealed impressions of multilevel disc and some facet disease with varying degrees of neural compromise; a small abdominal aortic aneurysm and dextroscoliosis. The record also contains a report of a January 10, 2006 electrodiagnostic examination.

On March 7, 2006 the Office asked Dr. McClure to clarify his January 10, 2006 report by providing a definite diagnosis and a reasoned opinion as to whether appellant's diagnosed condition was a result of the alleged November 30, 2005 work incident. In a report dated April 19, 2006, Dr. McClure opined that appellant's condition was related to the November 30, 2005 work incident. Nerve conduction studies showed significant delays in a-delta fiber responses in the L5 area, very severe on the right. His MRI scan showed a right paracentral disc protrusion producing sac compression, as well as facet arthroses at that level. Dr. McClure indicated that appellant had not experienced any back pain prior to the November 30, 2005 incident, nor did he have any history of back problems.

By decision dated May 18, 2006, the Office affirmed its denial of appellant's claim. The Office found that appellant had established the November 30, 2005 incident but that he had failed to show a causal relationship between his diagnosed condition and the accepted incident.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

causally related to the employment injury.[3] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

Causal relationship is a medical issue 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 must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.[9]

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the November 30, 2005 workplace incident occurred as alleged. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does

[3] *Robert Broome*, 55 ECAB 339 (2004).

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

In a December 5, 2005 duty status report, Dr. Harless, a chiropractor, indicated that appellant had sustained an injury to his lower back while bending over to pick up mail. He provided a diagnosis of lumbar sprain/strain due to the alleged injury. However, a chiropractor is considered a physician for purposes of the Act only where he diagnoses subluxation by x-ray.[10] Dr. Harless did not take any x-rays, nor did he diagnose a spinal subluxation. Therefore, he does not meet the statutory definition of "physician" and his report lacks probative medical value.

Dr. McClure's reports are also insufficient to establish appellant's claim. On January 10, 2006 Dr. McClure stated that appellant's pain began on November 30, 2005 after he picked up letters from the floor and that it increased throughout the day. X-rays of the lumbar spine showed mild evidence of degenerative disc disease. Appellant was able to walk on his heels and toes. He was limited from the floor on forward bending at five inches. Straight leg raising was 80 degrees on the right and 90 degrees on the left. Although Dr. McClure discussed findings of his examination, he failed to provide an opinion as to causal relationship. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11] Although Dr. McClure alluded to a possible connection between appellant's condition and the November 30, 2005 incident, he did not explain how appellant's back condition caused or contributed by his actions on that date. On April 19, 2006 he opined that appellant's condition was related to the November 30, 2005 work injury. Dr. McClure noted that nerve conduction studies showed significant delays in a-delta fiber responses in the L5 area and that his MRI scan showed a right paracentral disc protrusion producing sac compression, as well as facet arthroses at that level. However, he again failed to discuss the nature of the relationship between appellant's back condition and the work-related incident. Without explanation, Dr. McClure's blanket assertion that appellant's condition was related to the employment injury is not sufficient to establish a causal relationship. He is required to explain how appellant's condition is physiologically related to the November 30, 2005 employment incident. The Board notes that Dr. McClure's opinion is not based on a complete and accurate factual and medical background of the claimant. Dr. McClure indicated that appellant had not experienced any back pain prior to the November 30, 2005 incident, nor did he have any history of back problems. The record reflects, however, that appellant sustained a back injury in 1989 and that he was treated by a chiropractor prior to the November 30, 2005 injury. Dr. McClure did not discuss the

[10] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

nature of any prior back condition or explain why appellant's current condition is not merely a natural progression of the original condition, rather than a result of the alleged work-related injury. Therefore, his opinion is of diminished probative value.

There is insufficient evidence of record to establish a causal relationship between a diagnosed condition and the accepted November 30, 2005 incident. The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[12] To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[13] Appellant failed to submit such evidence and, therefore, failed to satisfy his burden of proof.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on November 30, 2005.

[12] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[13] *Robert Broome*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the May 18 and January 27, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 12, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board