

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

---

**HOSUM LO, Appellant**

**and**

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

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-497  
Issued: June 6, 2006**

*Appearances:*  
*Olean Fobbs, 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 December 30, 2005 appellant filed a timely appeal from the September 28, 2005 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of his occupational disease claim. 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 met his burden of proof in establishing that his lumbar and shoulder strains are causally related to factors of his federal employment.

**FACTUAL HISTORY**

On April 14, 2004 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that after he delivered some parcels on March 5, 2004, he felt increased pain in his lower back and shoulders. He stopped work on March 8, 2004. The employing establishment indicated that appellant had been performing modified work since sustaining an injury under claim number 13-2009952, for a sprain/strain of the neck, shoulder and back.

In support of his claim, appellant submitted a Form CA-2a, notice of recurrence, under his original claim arising August 29, 2000, claim number 13-2009952.<sup>1</sup> He included medical reports and work restrictions related to his original injury. In a March 11, 2004 medical report, Dr. Angela Soohoo, Board-certified in physical medicine and rehabilitation, stated that he was temporarily totally disabled from March 6 to 14, 2004 due to a spondylosis flare-up. She advised that appellant could return to work on March 15, 2004 with restrictions.

In an April 16, 2004 letter, Noel Stafford, manager customer service, advised that appellant was asked to deliver only four mail flats, not parcels as alleged.

By letter dated May 5, 2004, the Office notified appellant that the factual and medical evidence submitted was insufficient to establish his claim. It requested that he provide additional factual information together with a comprehensive medical report from his treating physician.

In a May 31, 2004 letter, appellant stated that on March 5, 2004 he was sent to deliver four small parcels (not flats -- magazines). He stated that the foot parking brake in the postal vehicle was harder to set than his personal vehicle's hand parking brake and that he had to press the foot parking pedal hard to engage the brake, which increased the pain in his lower back. Appellant also noted that, when he turned the steering wheel hard to curb the tires, his shoulders hurt and he felt pain. He addressed the results of diagnostic testing in 2000 and 2001 concerning his cervical and lumbar spines and shoulders and his various work restrictions and alleged recurrences from 2000 to 2003. Appellant submitted medical reports, studies and work restrictions which predated March 5, 2004. Contemporaneous evidence included physical therapy reports of April 30 and May 20, 2004 and three reports from Dr. Shu May Lee, a Board-certified internist, dated April 29, May 6 and June 3, 2004. She diagnosed sprains of the lumbar spine and shoulder and advised that appellant could work with restrictions.

By decision dated July 20, 2004, the Office denied appellant's claim on the grounds that he failed to establish that his claimed back and shoulder conditions were causally related to his modified work duties. He requested an oral hearing which was held July 26, 2005. No new evidence was received into the record. By decision dated September 28, 2005, an Office hearing representative affirmed the July 20, 2004 denial of the claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the

---

<sup>1</sup> The Board notes that as Office file number 13-2009952 is not part of the instant claim, the Board has no jurisdiction to address any issues with regard to that claim.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

Appellant claimed that his modified work on March 5, 2004 caused or aggravated his lumbar and shoulder strains. He previously had a claim for strains involving the lumbar and cervical spine and shoulders and was on modified duty at that time. The record also establishes that appellant handled and delivered mail in his job.

The medical evidence, however, does not indicate that appellant's lumbar and shoulder strains are causally related to his employment. The relevant medical evidence consists of reports from Dr. Lee dated April 29, May 6 and June 3, 2004. Dr. Lee diagnosed sprains of the lumbar spine and shoulder and advised that appellant could work within restrictions. In a March 11, 2004 medical report, Dr. Soohoo stated that appellant was temporarily totally disabled from March 6 to 14, 2004 due to a spondylosis flare-up. However, neither Dr. Lee nor Dr. Soohoo addressed how appellant's disability was caused or aggravated by his modified duties. As physical therapists are not considered to be physicians under the Act, the report of the physical therapists do not constitute medical evidence and thus have no weight or probative value.<sup>5</sup>

While appellant contends that his modified work contributed to his lumbar and shoulder strains, the record contains insufficient medical opinion explaining how his work duties caused and/or aggravated his preexisting conditions. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>6</sup> Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that the employment caused or aggravated

---

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (1999); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>4</sup> *Victor J. Woodhams*, *supra* note 3.

<sup>5</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

<sup>6</sup> *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

his condition is sufficient to establish causal relationship.<sup>7</sup> Casual relationship must be substantiated by reasoned medical opinion evidence, which is his responsibility to submit.

There is insufficient rationalized medical evidence addressing or explaining how appellant's claimed conditions were aggravated by his employment activities. He has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of employment.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 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

---

<sup>7</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).