

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

J.J., Appellant)
and) Docket No. 06-1938
U.S. POSTAL SERVICE, PORTSMOUTH MAIN)
POST OFFICE, Portsmouth, VA, Employer) Issued: November 30, 2006

)

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2006 appellant filed a timely appeal from the June 29, 2006 decision of the Office of Workers' Compensation Programs, which affirmed a March 2, 2006 Office decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On September 28, 2005 appellant, then a 43-year-old letter carrier, filed a recurrence claim, Form CA-2a, alleging that, on September 2, 2005, his lower back began hurting while delivering mail. He indicated that he informed his supervisor of the pain at the end of his assigned routes. Appellant returned to work on September 3, 2006, informed his supervisor that he was still in pain and performed his normal duties. When he returned to work on September 6,

2006 after the Labor Day holiday, he worked for an hour before informing his supervisor that he was in too much pain to work and was going to his “doctor.”¹ Appellant reported to the employing establishment again on September 7, 2006 and worked for five and a half hours before again informing his supervisor that he was in “extreme pain” and leaving to see his doctor. He alleged that the pain was in the same place and of the same intensity as a back sprain sustained on February 25, 2005. Appellant’s supervisor attached a memorandum to the claim generally corroborating both the February 2005 incident, which occurred when appellant was fleeing a dog and the September incidents. The supervisor also noted that appellant had not worked from September 8, 2006 to the time of filing the claim and was under the treatment of a chiropractor. The supervisor controverted the allegation that the September incident was related to appellant’s work duties or the previous injury.

On January 27, 2006 the Office requested additional factual and medical information to prove the claim, which it had categorized as a new occupational disease claim, rather than the recurrence of an earlier injury. On February 27, 2006 appellant provided a handwritten narrative and unsigned medical records from Dr. David S. Levi, a Board-certified physiatrist.

In response to the Office’s request for information about employment-related activities that contributed to his injury, appellant reported that his duties required him to carry a mailbag “anywhere from 45 pounds or more,” frequently climb and descend steps and walk for several miles every day. Appellant indicated that, at the end of his route on September 2, 2005, he felt a “sharp pain [that] was continuous and started running from [his] right lower back down to [his] right foot.” He provided no specific information about the circumstances leading to the onset of the pain. Appellant did provide information about previous back injuries, including a 1990 car accident, a 1999 work injury, a 2003 work injury, a January 2005 car accident and the February 2005 work injury. He also indicated that he was retired from the U.S. Navy as a 70 percent disabled veteran and that he had a degenerative disc disease. Appellant did not provide medical records from his alleged trips to the doctor on September 6 and 7, 2005. He indicated that he received an orthopedic referral, but was told by his chiropractor not to see an orthopedic doctor until workers’ compensation was approved. Appellant went to see Dr. Levi after discovering that his “paperwork was never turned in, so [he] was waiting for nothing.”

Dr. Levi’s unsigned medical reports, dated January 6 and 20, 2006, diagnose appellant with “[r]ight L5 radiculitis[,] likely secondary to annular tear at L5-S1.” He treated him in January 2006 with physical therapy and oral and injected medication. The reported medical history indicates that appellant sustained a work injury in February 2005 and a reinjury “when he was walking” in September 2005. Dr. Levi reviewed an MRI scan of appellant’s lumbar spine and noted “severe degenerative changes at L5-S1.” He also found “a small disc bulge and possibly some lateral recess stenosis at the L5-S1 level … [that] appears to be bilateral.” He recommended, “[i]n terms of work restrictions,” that appellant lift “no more than 35 pounds … for six months as he is at very high risk for recurrence.”

On March 2, 2006 the Office denied appellant’s claim on the grounds that he had not proved that his condition was the result of his employment. The Office found that Dr. Levi’s

¹ The Board notes that appellant mentions his “doctor” on the original claim form and his chiropractor on the supplemental materials. It is not clear whether these are the same person.

medical reports were evidence of the February 2005 injury, but not the new injury allegedly sustained in September 2005 because there was no evidence as to how his condition was aggravated by events in September 2005.

On March 21, 2006 appellant requested a review of the written record. No new evidence was presented by appellant or the employing establishment.

On June 29, 2006 an Office hearing representative affirmed the Office's March 2, 2006 decision. The hearing representative concurred with the Office's categorization of the claim as a new injury and not a recurrence. Relying on the procedure manual definition of recurrence, the hearing representative found that there was no "spontaneous material change ... without intervening injury or new exposure to factors causing the original illness" because the injury arose after "full duties on September 2 and 3[, 2005]." The hearing representative also concurred with the Office's finding that appellant had not met the burden of proving that his injury was causally related to his employment. The hearing representative emphasized that "the only medical evidence" was from an examination "several months later" and that it provided no "rationalized opinion explaining how the claimant's duties on September 2 and 3, 2005 caused or contributed to any back injury."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or 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 filed within the applicable time limitation; that an injury was sustained while 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 elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury and an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for

² 5 U.S.C. §§ 8101-8193.

³ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Generally, causal relationship may be established only by rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

There is no dispute that appellant was engaged in employment activities from September 2 to 7, 2005 when he experienced back pain. The issue to be resolved is whether the back pain resulted from the employment activities.

The Board finds that the medical evidence in the record is inadequate to establish that appellant sustained an injury in the performance of duty as alleged. Appellant submitted medical records by Dr. Levi, a Board-certified physiatrist, who diagnosed appellant with a back injury consistent with that claimed by appellant in September 2005. The Board notes, however, that Dr. Levi's reports were unsigned. The Board has held that unsigned reports are of diminished probative value as the author cannot be readily identified as a physician.¹² As such, the Board finds that the reports of Dr. Levi are of diminished probative value and are insufficient to establish appellant's claim. Thus, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury to his back in the performance of duty causally related to factors of his federal employment.

⁷ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² See *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2006 is affirmed.

Issued: November 30, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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