

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

W.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

)
)
)
)
)

**Docket No. 06-1197
Issued: September 5, 2006**

Appearances:

*W.T., 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 May 5, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 8, 2006 denying his traumatic injury 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 sustained a traumatic injury while in the performance of duty on January 7, 2006.

FACTUAL HISTORY

On January 26, 2006 appellant, a 49-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 7, 2006 he experienced a sharp pain in his upper back after loading and unloading trailers with a forklift. He did not stop working.

In support of his claim, appellant submitted an unsigned report dated January 24, 2006 from Logan International Health Center, indicating that he had been treated on that date by Elida Lara, a physician's assistant. He reported that he had experienced substantial pain after loading and unloading a trailer with a forklift. Ms. Lara diagnosed thoracic sprain/strain and released appellant to work, restricting him from lifting, carrying, pushing or pulling more than 15 pounds.

The employing establishment controverted appellant's claim. In a January 31, 2006 statement, Supervisor Paul Murphy reported that on January 24, 2006 appellant asked to go to the medical unit after he had been instructed to perform work at the courier doors that he did not want to perform. When asked when he had been injured, appellant stated that he had injured his back three years prior and wanted the medical unit to send him to a doctor to "have his back checked out." After Injury Compensation Specialist Pat Perry informed appellant that she could not assist him because his three-year-old claim had been closed, he stated that he injured his back on January 7, 2006 while loading and unloading trailers with a forklift.

On February 6, 2006 the Office notified appellant that the evidence submitted was insufficient to establish his claim. He was advised to provide additional documentation, including a firm diagnosis and a physician's opinion as to how the incident resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury; statements from any witnesses or other documentation supporting his claim; and the reason he delayed seeking medical treatment.

Appellant submitted unsigned physician's notes, dated January 24, 2006, from Ms. Lara, reflecting his claims that he injured his back on January 7, 2006 while loading and unloading trailers; that he reported the incident the following day; that he had failed to seek medical treatment sooner because his pain had been improving; and that his pain had become significant. He submitted unsigned notes from Dr. Donald C. Waugh, a treating physician, including notes dated January 31, 2006 reflecting an assessment of acute thoracic strain; notes dated February 7, 2006 reflecting his release to limited duty; and notes dated February 17, 2006 indicating that appellant was cleared to work without restrictions. The record also contains physical therapy notes dated February 1, 2006.

In a merit decision dated March 8, 2006, the Office denied appellant's claim, finding that the evidence was insufficient to establish that appellant had sustained an injury on January 7, 2006.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as

¹ 5 U.S.C. §§ 8101 *et seq.*

² 5 U.S.C. § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."³

An employee seeking benefits under the Act has the burden of proof to establish 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 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 causally related to the employment injury.⁴ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.⁵

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

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.⁷ An award of compensation may not be based on appellant's belief of causal relationship. 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.⁸

³ 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 ____ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Paul Foster*, 56 ECAB ____ (Docket No. 04-1943, issued December 21, 2004). *See also Betty J. Smith*, 54 ECAB 174 (2002); *Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See also* 20 C.F.R. § 10.5(ee).

⁶ *See Betty J. Smith*, *supra* note 5.

⁷ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

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 Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his back on January 7, 2006.

Appellant noted on his CA-1 form that he experienced a sharp pain in his upper back after loading and unloading trailers with a forklift at work on January 7, 2006. He provided no detailed account of the alleged injury.

Appellant's vague recitation of the facts does not support his allegation that a specific event occurred which caused an injury.¹⁰ Additionally, there are inconsistencies in the evidence which cast serious doubt on the validity of his claim. Appellant stated that he injured his back on January 7, 2006; but his supervisor noted that he did not report the alleged injury until January 24, 2006, after he had been instructed to perform work at the courier doors that he did not want to perform. When asked when he had been injured, appellant stated that he had injured his back three years prior and wanted the medical unit to send him to a doctor. Only after an injury compensation specialist informed him that she could not assist him because his three-year-old claim had been closed, did appellant claim that he had injured his back on January 7, 2006 while loading and unloading trailers with a forklift. There is no contemporaneous evidence of record supporting appellant's allegation that he injured his back on January 7, 2006. He did not seek medical attention until January 24, 2006, more than two weeks after the alleged injury. There is also no evidence of record to support his allegation that he reported the incident the following day. Moreover, appellant has not presented any corroborative evidence, such as witness statements, to substantiate that he injured his back on January 7, 2006 as alleged. His representation that he "experienced a sharp pain in his upper back after loading and unloading trailers with a forklift" does not describe the occurrence of an injury.

In *Tracey P. Spillane*,¹¹ an employee filed a traumatic injury claim alleging that she sustained an allergic reaction at work. However, she did not clearly identify the aspect of her employment which she believed caused the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves." The Board held that she did not

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

¹⁰ See *Dennis M. Mascarenas*, *supra* note 8.

¹¹ See *supra* note 5.

adequately specify the employment factors which caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. The medical record reflected that the employee did not clearly report to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. In this case, appellant's allegations are vague and do not relate with specificity the cause of the injury or how he injured his back while performing his duties on January 7, 2006. He did not address the nature of the employment activity in which he was engaged at the time of the alleged injury; or the immediate consequence of the injury (*e.g.*, whether he fell, stumbled or had to sit down). Appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty and it is not necessary to discuss the probative value of the medical reports.¹²

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged or that such incident caused an injury.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury to his back in the performance of duty.

¹² *Id. See also Paul Foster, supra* note 5. (The Board found that claimant had failed to establish the fact of injury, where he vaguely alleged that he "twisted his left knee while delivering mail," did not relate with specificity the cause of the injury or how he twisted his knee while performing his duties; and did not address the nature of the employment activity in which he was engaged at the time of the alleged injury or the immediate consequence of the injury.)

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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