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

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| **J.J., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1682** |
| | ) | **Issued: November 23, 2007** |
| **U.S. POSTAL SERVICE, POST OFFICE, Beckley, WV, 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 May 30, 2007 appellant filed a timely appeal from the October 20, 2006 and February 21, 2007 merit decisions of the Office of Workers' Compensation Programs that denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

### ***ISSUE***

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

### ***FACTUAL HISTORY***

On August 26, 2006 appellant, then a 64-year-old part-time flexible clerk, filed a traumatic injury claim alleging that he sustained an injury to his lower back and left hip in the performance of duty on June 21, 2006. He explained that on that date he lifted a priority box and felt a pull in his back. Appellant stopped work on August 26, 2006 and returned on

September 1, 2006. He also filed a claim for compensation for leave buyback but did not specify the dates involved. The employing establishment controverted appellant's claim.

In support of his claim, appellant submitted an August 26, 2006 duty status report from Jessica Sharp, a family nurse practitioner. Ms. Sharp diagnosed lumbosacral strain but did not give any work restrictions. Appellant also provided an August 26, 2006 attending physician's report from Ms. Sharp, again diagnosing lumbosacral strain. Appellant submitted a September 5, 2006 note from John A. Ross, a physician's assistant, recommending that he remain off work until a follow up appointment in six weeks.

On October 17, 2006 the employing establishment offered a limited-duty assignment, which appellant accepted.

In an October 17, 2006 duty status report, Mr. Ross diagnosed acute low back strain and recommended that appellant perform light-duty work for another three weeks.

By decision dated October 20, 2006, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the June 21, 2006 employment incident.

The employing establishment provided a June 21, 2006 accident report and an undated memorandum explaining that appellant declined to seek medical attention or file a claim immediately following his injury.

In an October 17, 2006 report of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, Dr. Dennis K. Bielecki, a radiologist, advised that appellant complained of "worsening pain since June 21, 2006 injury." Dr. Bielecki noted degenerative changes from the L3-4 level to the L5-S1 level and indicated that the most severe degenerative changes were at L5-S1 and L4-5.

On October 19, 2006 appellant explained that he delayed seeking medical treatment until August 26, 2006 because he experienced significant pain until the evening of August 25, 2006. However, he reported the incident to his supervisor on the date of the alleged injury.

Appellant requested reconsideration on January 10, 2007.

By decision dated February 21, 2007, the Office denied modification of its October 20, 2006 decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 timely filed within the applicable time limitation period of the Act, that an injury was

[1] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "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.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

## ***ANALYSIS***

The record establishes that appellant picked up a priority box as alleged on June 21, 2006. However, appellant has not submitted reasoned medical evidence supporting a causal relationship between the employment incident and a diagnosed medical condition. The Board finds that appellant did not meet his burden of proof in establishing his traumatic injury claim.

In support of his claim, appellant submitted August 26, 2006 duty status and attending physician's reports from Ms. Sharp, a family nurse practitioner who diagnosed lumbosacral strain. The Board finds that these reports do not constitute competent medical evidence because Ms. Sharp, a nurse practitioner, is not a physician as defined in the Act.[10] Appellant also

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.*

[6] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

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

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

[10] *See* 5 U.S.C. § 8101(2); *Joseph N. Fassi*, 42 ECAB 677 (1991).

provided a duty status report and a note recommending time off work from John A. Ross, a physician's assistant. However, Mr. Ross' reports also do not constitute competent medical evidence because Mr. Ross, a physician's assistant, is also not a physician pursuant to the Act.[11] Because neither Ms. Sharp nor Mr. Ross is a physician, their reports do not have probative value on the issue of causal relationship, which is a medical question that must be resolved by competent medical evidence.[12]

Appellant also provided an October 17, 2006 MRI scan report from Dr. Bielecki, who diagnosed degenerative changes of the lumbar spine. Although he noted complaints of worsening pain "since June 21, 2006 injury," Dr. Bielecki did not provide a specific opinion on causal relationship, if any, between the employment incident and appellant's diagnosed condition. Dr. Bielecki did not address why picking up a priority box caused or aggravated a diagnosed condition.

Accordingly, the Board finds that appellant has not met his burden of proof in establishing his claim because he has not submitted reasoned medical evidence from a physician explaining the reasons why picking up a priority box on June 21, 2006 would cause or aggravate a diagnosed condition.

## ***CONCLUSION***

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty.

[11] *See id.*; *George H. Clark*, 56 ECAB ___ (Docket No. 04-1572, issued November 30, 2004).

[12] *See supra* notes 10, 11; *Steven S. Saleh*, 55 ECAB 169 (2003).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 21, 2007 and October 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 23, 2007
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