

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dayton, OH, Employer**

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**Docket No. 07-1405  
Issued: April 16, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 1, 2007 appellant filed a timely appeal from the April 9, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of his claim for traumatic injury. Pursuant to 20 C.F.R. §§ 502.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant sustained an injury on March 20, 2006.

**FACTUAL HISTORY**

On April 4, 2006 appellant, then a 35-year-old letter carrier, filed a claim alleging that he injured his low back on March 20, 2006 when he slipped on his postal route. He stopped work on April 4, 2006 and returned to duty in May, before stopping work again. Appellant's claim was controverted by the employing establishment.<sup>1</sup>

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<sup>1</sup> It was noted that, prior to April 4, 2006, appellant moved firewood at the home of a supervisor.

By letter dated April 10, 2006, the Office advised appellant that it had received his claim and that he should provide a physician's opinion as to how his low back condition resulted from the March 20, 2006 incident.

Appellant submitted an April 6, 2006 disability certificate from Dr. Choong Young Rhee, an internist and staff physician at a local urgent care facility. Dr. Rhee noted that appellant would be off work until April 10, 2006. A magnetic resonance imaging (MRI) scan was obtained on April 6, 2006, which revealed some degenerative disc desiccation at L3-5, otherwise testing was normal and reported negative for any disc herniation or spinal stenosis. On April 19, 2006 Dr. Joseph T. Ewing, a chiropractor, stated that appellant would be totally disabled until May 1, 2006. He reported a history that appellant experienced low back pain while in the military and claimed to have reinjured his back on March 20, 2006. Dr. Ewing diagnosed a lumbosacral sprain/strain with an aggravation of preexisting lumbar disc disease. He reviewed x-rays obtained on April 4, 2006 and stated that they revealed "typical lumbar vertebrae and spacing." Dr. Ewing noted osseous malalignment and lordosis with mild spondylosis at L3 and L4. He advised that appellant would be treated with chiropractic manipulation.

By decision dated May 15, 2006, the Office denied appellant's claim. It found the medical evidence of record insufficient to establish that the March 20, 2006 incident caused a low back injury.

Appellant requested an oral hearing which was held on January 9, 2007. He submitted records pertaining to his treatment at a local emergency room on April 4, 2006, where he was seen by a Dr. Charles M. McIntosh who noted that x-rays were obtained, indicating on form report that there was no sign of fracture or disc displacement. Dr. McIntosh provided a diagnosis of acute low back pain and acute myofascial lumbar strain. In a February 7, 2007 note, Dr. Kingsley A. Ozoude, a Board-certified radiologist, stated that he saw appellant on January 19, 2007, at which time "I thought the patient's symptoms were the result of a fall on March 20, 2006." He noted that appellant related that severe pain started on April 4, 2006. An MRI scan was obtained on December 26, 2006 by a Dr. J. Keith Birdwell. He noted degenerative spurring at L2-3 and L3-4, minimally at L1-2 and a four millimeter (mm) retrolisthesis of L3 on L4. Dr. Raymond J. Poelstra, a Board-certified neurosurgeon, reported on December 26, 2006 that appellant presented with a history of low back pain "on and off" over time, with a bulging disc diagnosed while in the military. He noted appellant's employment as a letter carrier and obtained a history of low back pain on April 4, 2006, for which he went to a local emergency room. Presently, appellant experienced low back pain with no radiation of pain to the legs. Dr. Poelstra noted findings on examination, including bilateral extremity strength and negative straight leg raising. An MRI scan was obtained that day, which revealed bilateral facet arthropathy from L2-3 through L5-S1 with mild diffuse disc bulging at L3-4 and L4-5 with loss of disc hydration at L2-3 and L4-5.

In an undated note, Dr. Ewing advised counsel for appellant that x-rays had been obtained on April 4, 2006, which he reviewed on his initial evaluation of appellant. He noted that they demonstrated osseous malalignment of the lumbar spine, with a rotational subluxation of L5 and retrolisthesis of L3. Dr. Ewing stated that appellant's treatment had consisted of manipulation to reduce the subluxations. He submitted his treatment notes for the period April 19 to November 1, 2006. Appellant also submitted the notes of Dr. Rhee. On April 6,

2006 Dr. Rhee stated that appellant sought treatment at the urgent care facility for chronic back pain. Appellant related a history of back problems for 10 years, with an MRI scan obtained in 1998 while in the service, which showed a herniated disc. He stated that lifestyle changes helped relieve the pain until he slipped in snow several weeks prior. Appellant was treated intermittently at the urgent care facility.

In a November 27, 2006 report, Dr. John Petty, Board-certified in physical medicine and rehabilitation, evaluated appellant at the request of Dr. Timothy Heyd. He reviewed a history of injury and medical treatment, noting that appellant's chief complaint was pain in the midline low back. Appellant originally injured his back while in military service and was treated with epidural steroid injections. He was discharged in 1999 and did well until April 2006. Appellant described slipping in the snow while delivering mail and experiencing acute low back pain. Dr. Petty noted that appellant's pain symptoms did not radiate into either leg but increased with activity. He provided findings on physical examination, noting palpable tenderness of the midline of the lumbar spine from L3 through S1. Lumbar flexion and extension were both limited. Dr. Petty recommended repeat diagnostic studies for which appellant was referred to Dr. Poelstra. As appellant believed he was improving with chiropractic treatment, he would continue that program.

In a note dated January 19, 2007, Dr. Poelstra noted that the recent MRI scan showed degenerative changes compatible with appellant's age but which was not amenable to surgical intervention. He stated: "[appellant] is a letter carrier and stated that he started to notice [pain] about two weeks after he slipped on some ice while on his mail route. It was discussed with the patient that while this may have been causative it is difficult to evaluate the exact origin." Dr. Poelstra indicated that other duties at the post office might need to be considered.

On January 19, 2007 Dr. Ozoude advised that the December 26, 2006 MRI scan demonstrated bilateral facet arthropathy of L2-3 through L5-S1. However, appellant had been advised that he was not a surgical candidate. Dr. Ozoude recommended facet joint injections, following which his condition would be evaluated.

Appellant returned to Dr. Petty on February 2, 2007, at which time he noted that no evidence of a focal disc herniation, stenosis or nerve root compression had been found. He noted improvement in his back pain with the facet joint steroid injections.

In an April 9, 2007 decision, an Office hearing representative affirmed the denial of appellant's claim. She noted that, although the medical evidence revealed a preexisting low back condition, the medical evidence submitted to support the claim did not adequately address how the March 20, 2006 incident aggravated or contributed to appellant's back condition and need for medical treatment commencing April 6, 2006.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim. When the employee claims injury in the performance of duty, he must submit sufficient evidence to establish that he sustained a specific incident at the time, place and in the manner alleged and that such incident caused an

injury.<sup>2</sup> The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship.<sup>3</sup>

To establish a causal relationship between an employee's condition and an alleged employment injury, he must submit rationalized medical opinion from a physician based on a complete and accurate medical and factual background.<sup>4</sup> The physician's opinion must be expressed in terms of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant's employment factors.<sup>5</sup> The issue of whether an employee sustained an aggravation of a preexisting back condition is medical in nature and can only be resolved by the submission of probative medical evidence.<sup>6</sup>

### ANALYSIS

Appellant alleged injury to his low back on March 20, 2006 when he slipped in snow while on his postal route. The Office accepted that the employment incident occurred as alleged. The issue on appeal, therefore, is whether appellant submitted sufficient medical evidence to establish that his low back condition was caused or contributed to by the employment incident.

The evidence reflects that appellant did not seek medical attention for his low back condition following the March 20, 2006 incident until April 4, 2006, when he sought treatment at a local emergency room. He was treated by Dr. McIntosh, who noted that x-rays obtained that date were negative for fracture or disc herniation. Dr. McIntosh diagnosed acute low back pain and myofascial back strain. Appellant was next treated at an urgent care facility for back pain on April 6, 2006. He was seen by Dr. Rhee, who obtained a medical history that appellant had previously injured his low back while in military service. Although stating that appellant had chronic back pain, Dr. Rhee did not provide a firm medical diagnosis. Appellant was thereafter referred for diagnostic studies and an MRI scan was obtained on April 6, 2006. It revealed degenerative disc disease of the lumbar spine, but was otherwise reported as negative for any herniated disc or significant spinal stenosis.

On April 19, 2006 appellant came under the treatment of Dr. Ewing, a chiropractor, who stated that he reviewed the x-rays obtained on April 4, 2006. He initially diagnosed a lumbosacral strain with an aggravation of preexisting lumbar disc disease. After being advised as to the limitations of treatment by chiropractors under the Act, Dr. Ewing subsequently

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<sup>2</sup> See *John W. Montoya*, 54 ECAB 308 (2003).

<sup>3</sup> See *Louis T. Blair, Jr.*, 54 ECAB 348 (2003).

<sup>4</sup> See *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>5</sup> See *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>6</sup> *George C. Vernon*, 54 ECAB 319 (2003).

diagnosed a rotational subluxation and his treatment records indicate that he provided manual manipulation of the spine.<sup>7</sup>

On November 27, 2006 appellant was evaluated by Dr. Petty for complaints of midline low back pain. Dr. Petty noted appellant's history of a prior back injury while in military service, noting that he did well from 1999 until April, 2006. After providing findings on examination of appellant, he recommended additional diagnostic studies. Another MRI scan was obtained and reviewed by Dr. Poelstra, who noted degenerative changes compatible with appellant's age but not amenable to surgical intervention. Dr. Poelstra noted appellant's history of injury medical treatment and advised that his duties at the post office might need to be changed. The reports of Dr. Petty and Dr. Poelstra do not provide a firm medical diagnosis of appellant's medical condition or provide a reasoned medical explanation as to how the March 20, 2006 incident of slipping in snow would cause or contribute to appellant's low back symptoms commencing April 4, 2006. The record reflects that appellant returned to Dr. Petty on February 7, 2007, at which time the physician advised that there was no evidence of a focal disc herniation, stenosis or nerve root compression. Appellant continued with chiropractic treatment and also received facet joint steroid injections.

As submitted, the medical evidence of record does not provide a fully rationalized opinion from any physician addressing the issue of causal relationship. While it is apparent that appellant sustained injury to his low back while in military service, a preexisting condition; the medical evidence does not provide any explanation based on reasonable medical certainty detailing how appellant's low back degenerative disc disease was aggravated or contributed to by the March 20, 2006 slip in snow while delivering mail. Although there are extensive treatment records, there is a lack of a firm medical diagnosis. Dr. McIntosh noted a myofascial strain of the low back on April 4, 2006, but did not provide any explanation of how the strain related back to the incident accepted in this case. Dr. Ozoude saw appellant on January 19, 2007 and stated: "I thought the patient's symptoms were the result of a fall on March 20, 2006." However, this opinion is inaccurate as appellant has made it clear he did not fall on March 20, 2006. Moreover, there was no explanation by Dr. Ozoude for his stated conclusion on causal relationship. Dr. Ewing, the chiropractor, diagnosed a spinal subluxation but his reports do not adequately address how this condition was caused or contributed to by appellant's slipping on snow. For these reasons, the Board finds that appellant has not met his burden of proof to establish that his preexisting low back condition was aggravated or contributed to by the March 20, 2006 employment incident.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficient medical evidence to establish that the March 20, 2006 incident at work caused or contributed to an injury or disability commencing April 4, 2006.

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<sup>7</sup> Section 8101(2) of the Act defines the term "physician" to include chiropractors only to the extent that their reimbursable services as limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311. The regulations provide that a chiropractor may interpret his or her x-rays to the same extent as any other physician.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 16, 2008  
Washington, DC

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

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

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