

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

C.R., Appellant)

and)

U.S. POSTAL SERVICE, METRO POSTAL)
STORE, Miami, FL, Employer)

**Docket No. 07-1683
Issued: January 8, 2008**

Appearances:
Linda Temple, Esq., for the appellant
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 June 5, 2007 appellant, through his representative, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated May 10 and February 9, 2007 finding that he had not established an injury on July 1, 2005. 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 has met his burden of proof in establishing that he sustained an injury in the performance of duty on July 1, 2005.

FACTUAL HISTORY

On August 17, 2005 appellant, then a 58-year-old letter carrier, filed a notice of traumatic injury alleging that he sustained an injury to his right shoulder and neck on July 1, 2005 when he pulled a hamper full of boxes. He required neck surgery as a result of this incident. On the reverse of the form, Alexander Iniguez, a supervisor, indicated that appellant stopped work on

July 5, 2005 and had not returned. Mr. Iniguez stated that appellant provided notice of his injury on August 17, 2005.

Appellant submitted a witness statement from Jaime Almedia, a coworker. He stated that on July 1, 2005 appellant mentioned that he injured himself while loading a truck. Mr. Almedia stated that on July 5, 2005 appellant informed him that he had experienced sharp pains in his neck and shoulders throughout the weekend and felt nauseated. In a statement dated July 14, 2005, Patricia B. White stated that she was not aware that appellant had injured himself on July 1, 2005 while dispatching mail in hampers at 4:50 p.m. On the following Tuesday appellant informed her that he had experienced pain in his neck and shoulders all weekend. Faith Richardson completed a statement on July 14, 2005. She was not aware that appellant had injured himself on July 1, 2005. Ms. Richardson stated that appellant never mentioned his injury to her even on July 5, 2005 when he left and used sick leave. In a statement dated July 14, 2005, Olga Garcia stated that appellant reported his July 1, 2005 injury to her on July 5, 2005. Appellant stated that he dispatched mail in hampers to a truck as the clerks were busy with customers and strained himself in the process.

In a letter dated August 23, 2005, the employing establishment noted that appellant had returned to light-duty work on June 20, 2005 following an accepted employment injury. The employing establishment noted that appellant could perform only two hours of pushing and pulling in accordance with his restrictions, and generally, he did not perform any pushing and pulling. The employing establishment reviewed the statements from coworkers that appellant dispatched mail in hampers to a truck driver at 4:50 on July 1, 2005 as the retail clerks were busing with customers.

The Office requested additional factual and medical information on August 30, 2005. The Office noted that appellant had not provided timely notification of his work injury, that he had failed to provide witness statements and had failed to provide the necessary medical evidence establishing a diagnosed condition.

By decision dated October 5, 2005, the Office denied appellant's claim finding that the evidence was not sufficient to establish that the incident occurred on July 1, 2005, as alleged. Moreover, there was no medical evidence that provided a diagnosis which could be connected to the claimed incident.

Appellant's representative requested reconsideration on November 21, 2005 and included his response to the Office's August 30, 2005 request for information. On September 15, 2005 appellant reported that on July 1, 2005 he pulled a hamper full of boxes between 4:30 and 5:00 p.m. and experienced pain in his right shoulder and neck as he loaded a postal truck. Appellant's workday ended at 5:00 p.m. He next reported to scheduled work on July 5, 2005 and reported the incident of July 1, 2005 on that date.

By decision dated February 9, 2007, the Office reviewed the merits of appellant's claim and denied modification of its October 5, 2005 decision. The Office noted that the employing establishment disputed appellant's claim that he informed his supervisor of his July 1, 2005 injury on July 5, 2005 and alleged that he did not report his injury until August 18, 2005. The

Office also noted that appellant had not submitted medical evidence regarding the diagnosed condition which he felt resulted from his alleged employment incident.

Appellant requested reconsideration on April 6, 2007. In a note dated July 13, 2005, Dr. Luis R. Pagan, a Board-certified neurosurgeon, noted appellant's symptoms of neck pain, right shoulder pain and numbness of the left hand. He stated that appellant's neurological examination was normal and that he could continue to perform modified work. On November 14, 2005 Dr. Pagan stated: "[Appellant] returned with an exacerbation of back pain association with bilateral arm discomfort and hand numbness that was exacerbated after pulling a hamper on July 1, 2005." He recommended physical therapy and stated that appellant's previously accepted neck injury of June 20, 2000 was exacerbated by the July 1, 2005 injury.

By decision dated May 10, 2007, the Office reviewed appellant's claim on the merits and denied modification of its prior decisions. The Office found that Dr. Pagan's report was of little probative value in establishing that the July 1, 2005 employment incident occurred as alleged or that appellant sustained an injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ 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 sustained 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. 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.²

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.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. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his

¹ 5 U.S.C. §§ 8101-8193.

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ 20 C.F.R. § 10.5(ee).

burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical 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. The opinion of the physician 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 specific employment factors identified by the claimant.⁵

ANALYSIS

Appellant has submitted factual evidence in the form of his claim form, witness statements and physician's notes indicating that he sustained an employment incident on July 1, 2005. While there were no witnesses to appellant's injury, he described the circumstances to coworkers on July 5, 2005 and sought medical treatment on July 13, 2005 from Dr. Pagan, a Board-certified neurosurgeon. Appellant's statements describing his employment incident are consistent with his subsequent actions and the Board finds that there are no such inconsistencies in the evidence to cast serious doubt on the validity of his claim that he was pulling a hamper full of mail on July 1, 2005.

Appellant must also submit medical evidence to establish that a personal injury occurred as a result of the July 1, 2005 employment incident. Dr. Pagan did not describe any employment activity that resulted in appellant's condition and did not provide a diagnosis on July 13, 2005. He merely described appellant's symptoms of neck pain, right shoulder pain and numbness of the left hand. Dr. Pagan noted that appellant could continue to work. As he did not discuss the cause of appellant's pain, his report is of diminished probative value. The Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation.⁶

In the November 14, 2005 note, Dr. Pagan found that appellant had experienced an exacerbation of back pain after pulling a hamper on July 1, 2005. He noted that appellant's previously accepted neck injury was also exacerbated by this incident. Dr. Pagan did not explain how or why appellant's accepted employment activity would have resulted in back pain or an exacerbation of his accepted neck condition. Without medical reasoning, this report is of reduced probative value and not sufficiently rationalized to meet appellant's burden of proof. Appellant failed to submit medical evidence based on a complete factual and medical background, supported by affirmative evidence, addressing the specific factual and medical

⁴ *Id.*

⁵ *Id.*

⁶ *Robert Broome*, 55 ECAB 339, 342 (2004).

evidence of record and providing medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident of employment. Therefore, he failed to discharge his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on July 1, 2005 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 10 and February 9, 2007 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: January 8, 2008
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