

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

H.Y., Appellant

and

**U.S. POSTAL SERVICE, FREEHOLD POST
OFFICE, Freehold, NJ, Employer**

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**Docket No. 07-1789
Issued: January 8, 2008**

Appearances:
Thomas R. Uliase, Esq., for 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 25, 2007 appellant, through counsel, filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated July 5, 2006 and January 19, 2007 finding that he did not sustain an injury in the performance of duty on November 9, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on November 9, 2005.

FACTUAL HISTORY

On December 13, 2005 appellant, then a 41-year-old rural letter carrier, filed a traumatic injury claim assigned file number 02-2513818.¹ He alleged that on November 9, 2005 he hurt his lower back and legs while lifting and casing flat mail. Appellant described severe pain in his lower back that went into both legs. He stopped work on November 10, 2005. By letter dated March 14, 2006, the employing establishment controverted the claim.

The Office received medical records covering the period July 12 to December 11, 2005 regarding appellant's back condition. A November 22, 2005 medical report of Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, noted that appellant returned with lower back pain. Dr. Rosenblum reviewed normal diagnostic test results and normal findings on physical examination. He opined that based on the test results, he had nothing from a neurological perspective to offer appellant. Dr. Rosenblum recommended a second opinion medical examination by Dr. Ani, a Board-certified orthopedic surgeon, to determine the etiology and course of treatment for appellant's persistent low back pain. In a December 29, 2005 treatment note, Dr. Rosenblum stated that appellant complained of knee pain. He recommended physical therapy. A December 20, 2005 medical report of Dr. Harris N. Bram, a Board-certified anesthesiologist, stated that appellant had a history of back pain radiating predominantly down both anterior thighs to the knees. Dr. Bram diagnosed lumbar radiculitis and left knee pain.

By letter dated May 18, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence to support his claim.

On June 1, 2006 appellant reiterated his prior description of the November 9, 2005 incident and his symptoms.

A June 16, 2006 report of Dr. Shahid W. Farooqui, a Board-certified internist, noted that he first examined appellant on September 30, 2005. Appellant related a history that he sustained work-related back pain in October 2004. He continued to experience back pain in November 2004. Dr. Farooqui indicated that appellant sustained another employment-related injury on November 9, 2005. He opined that based on a history and sequence of events, appellant exacerbated his back pain that originally started in November 2004.

By decision dated July 5, 2006, the Office denied appellant's claim. The evidence of record was sufficient to establish that he experienced the claimed November 9, 2005 incident, but the medical evidence did not establish that he sustained a back injury.

In a July 10, 2006 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative.

¹ On November 30, 2005 appellant filed a claim alleging that he sustained a recurrence of disability on November 9, 2005 due to employment-related sacroilitis which he sustained on October 21, 2004. By letter dated April 28, 2006, the Office advised appellant that the claim was assigned a number for a new injury sustained on November 9, 2005.

In a July 7, 2006 report, Dr. Ani stated that appellant suffered from sacroilitis and degenerative lumbar disc disease. In an August 23, 2006 report, Dr. Farooqui opined that appellant had chronic back pain with multiple episodes of exacerbation due to lifting and carrying while walking at work. He recommended that appellant seek a job that did not require lifting heavy weights or walking long hours. On August 7, 2006 he noted a history of the October 24, 2004 employment injury and the November 9, 2005 employment incident. He found that appellant was unable to return to work due to chronic back pain.

In a November 25, 2006 statement, appellant related that on November 9, 2005 he was lifting a full tare of flats from the floor to his case. He did not know exactly how much it weighed but his job description required him to collect all classes of mail weighing up to 70 pounds.²

Appellant submitted numerous medical records. Dr. Rosenblum's December 27, 2005 prescription ordered a rheumatology evaluation. In a January 12, 2006 prescription, Dr. Mutahir Ali Abidi, a Board-certified internist, ordered a magnetic resonance imaging (MRI) scan of appellant's left knee and left thigh. Dr. Abidi stated that appellant experienced left knee pain and pain in the distal quadriceps. Diagnostic test reports dated January 25 through April 4, 2006 provided results regarding appellant's lumbar spine, abdomen, pelvis and left knee. On November 28, 2005 Dr. Farooqui stated that appellant was disabled for work until December 15, 2005. On December 16, 2005 Dr. Ani opined that appellant was disabled for work until he was reevaluated on January 9, 2006.

By decision dated January 19, 2007, an Office hearing representative affirmed the July 5, 2006 decision. The hearing representative found that appellant failed to submit rationalized medical evidence establishing that he sustained a back injury causally related to the accepted November 9, 2005 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each

² At the November 14, 2006 hearing, appellant's attorney stated that appellant worked part time for H & R Block and an investment banking firm. Following the hearing, appellant submitted the employing establishment's December 14, 2006 investigative report and exhibits. The report revealed appellant's employment and activities during the period February 1 through December 1, 2006 while he sought workers' compensation benefits from the Office.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

The record supports that on November 9, 2005 appellant lifted and cased mail. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused a lower back condition.

On November 22, 2005 Dr. Rosenblum found that he could not offer appellant any neurological treatment based on normal findings on physical examination. He referred appellant to Dr. Ani for a medical examination to determine the etiology and course of treatment for his persistent low back pain. Dr. Rosenblum's December 29, 2005 treatment note recommended physical therapy for appellant's knee pain. Dr. Bram's December 20, 2005 report found that appellant sustained lumbar radiculitis and left knee pain. Dr. Farooqui's June 16, 2006 report noted a history that appellant sustained work-related back pain in October 2004 which continued in November 2004 and on November 9, 2005 when he sustained another employment-related injury. He opined that, based on a history and sequence of events, appellant exacerbated his back pain that originally started in November 2004. The prescriptions of Dr. Rosenblum,

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

Dr. Abidi and Dr. Farooqui directed a medical evaluation and physical therapy. A physician's mere diagnosis of pain without more by way of medical rationale does not constitute a basis for payment of compensation.¹¹ Dr. Bram did not address how appellant's lumbar radiculitis condition was caused or aggravated by the November 9, 2005 employment incident. The Board finds that the reports of Dr. Rosenblum, Dr. Bram and Dr. Farooqui, the treatment note of Dr. Rosenblum and the prescriptions of Dr. Rosenblum, Dr. Abidi and Dr. Farooqui are insufficient to establish appellant's claim.

On July 7, 2006 Dr. Ani's report found that appellant had sacroilitis and degenerative lumbar disc disease. However, this is insufficient to establish appellant's claim. Dr. Ani did not address how appellant's conditions were caused or aggravated by the accepted employment incident.

Dr. Farooqui's August 7, 2006 report noted a history of the October 24, 2004 employment injury and the November 9, 2005 employment incident. He found that appellant was unable to return to work due to chronic back pain. In an August 23, 2006 report, Dr. Farooqui found that appellant had chronic back pain and multiple episodes of exacerbation due to lifting and carrying while walking at work. Dr. Farooqui did not provide medical rationale explaining how the November 9, 2005 employment incident was caused or contributed to appellant's chronic back condition and resultant disability. His November 28, 2005 disability certificate merely indicated that appellant was disabled for work until December 15, 2005. Dr. Ani's December 16, 2005 disability certificate found that appellant was disabled for work until January 9, 2006. Dr. Farooqui's and Dr. Ani's disability certificates are insufficient to establish appellant's claim because they fail to provide a diagnosis or discuss how appellant's condition was caused by the November 9, 2005 employment incident.¹²

The diagnostic test reports do not address how appellant's low back condition was caused or aggravated by the accepted employment incident.

Appellant did not submit sufficient medical evidence establishing the causal relationship between his low back condition and the accepted November 9, 2005 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a low back injury in the performance of duty on November 9, 2005. Therefore, he failed to meet his burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the November 9, 2005 employment incident, he has failed to meet his burden of proof.

¹¹ See *Robert Broome*, 55 ECAB 493 (2004).

¹² *Daniel Deparini*, 44 ECAB 657, 659 (1993).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2007 and July 5, 2006 decision of the Office of Workers' Compensation Programs are affirmed.

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