



Appellant submitted an emergency room report from Dr. Kurt Kusserow, Board-certified in emergency medicine, dated May 23, 2006, who treated him for back pain and prescribed Motrin and recommended he follow up with his treating physician. Dr. Kusserow restricted appellant to modified activity for two days.

By letter dated May 30, 2006, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified had contributed to his claimed injury. In a letter of the same date, the Office requested the employing establishment address appellant's claim.

Appellant submitted a doctor's first report of occupational injury from Dr. Gerard Telep, a Board-certified family practitioner, dated May 25, 2006, who noted that appellant was a machine operator and mail sorter who reported getting jammed between two metal carts full of parcels at work on May 23, 2006. Dr. Telep diagnosed lumbosacral strain, shoulder contusion and foot contusion and advised that appellant could return to work in two days. He checked a box on the form report indicating that his findings were consistent with appellant's statement. Dr. Telep noted findings upon physical examination of lumbar tenderness and indicated that the x-ray of the lumbar spine was negative. On May 31, 2006 he noted that appellant's condition improved and the physical examination was normal. Dr. Telep diagnosed contusion of the back, right shoulder strain and right ankle strain and advised that appellant could return to work without restrictions. In a work status report dated June 1, 2006, he diagnosed contusion of the back and strain of the shoulder and noted that appellant's condition was improving.

In a letter dated June 7, 2006, the employing establishment challenged appellant's claim that he was hit by an OTR container and submitted several witness statements from coworkers and supervisors which provided differing accounts of the events of May 23, 2006.

Appellant submitted a statement dated May 30, 2006 and noted that, on May 23, 2006, he and a coworker were pushing an OTR container to the warehouse when they suddenly stopped and he was struck in the back by another OTR container. He submitted a doctor's first report of occupational injury from Dr. Kusserow, dated May 23, 2006, who noted that appellant was a mail sorter and presented with back pain after an injury at work. Dr. Kusserow noted findings upon physical examination of tenderness of the low back and indicated that an x-ray of the lumbar spine was negative. He diagnosed back pain, prescribed Motrin and Flexeril and advised that appellant could return to regular work on May 25, 2006. A May 23, 2006 x-ray of the lumbar spine revealed no fracture or dislocation and age related mild degenerative spurring.

Appellant also submitted a work status report from Dr. Janet B. Abshire, a Board-certified internist, dated June 7, 2006, who noted a history of injury on May 23, 2006 and diagnosed back contusion, shoulder strain and ankle strain. Dr. Abshire returned appellant to modified duty on June 7, 2006. Appellant further submitted a June 13, 2006 physician's assistant report, which noted his treatment for a May 23, 2006 back injury. Dr. Abshire's assistant reported diagnoses and stated that appellant could return to limited duty. In a June 23, 2006 report, Dr. Telep diagnosed lumbar strain and discharged appellant from his care as cured without ratable disability.

In a decision dated July 6, 2006, the Office denied appellant's claim as the evidence was not sufficient to establish that the events occurred as alleged.

On June 20, 2007 appellant requested reconsideration and submitted a diagram of the work accident on May 23, 2006. He resubmitted medical reports from Dr. Telep dated May 25 to June 23, 2006 and from Dr. Abshire dated June 7, 2006, which were previously noted and discussed above. Appellant submitted an investigative interview prepared by a union steward, which noted that on May 23, 2006 he was pushing an OTR container to the warehouse and paused and was struck from behind by another container and sustained injuries to his back, leg and right elbow. He submitted a witness statement from Steve Curry, a coworker, dated August 7, 2006, who indicated that on May 23, 2006 he saw appellant pushing an OTR container when he suddenly stopped and was struck in the back by another container.

In a decision dated August 1, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by factors of employment. The Office noted that appellant established that he experienced the employment incident on May 23, 2006; however, there was insufficient medical evidence to establish that the May 23, 2006 work incident caused a back, shoulder or ankle injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 the applicable time limitation 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.<sup>2</sup>

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 which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

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.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

The Office properly found that on May 23, 2006 appellant was pushing a mail container as alleged and was struck in the back by another OTR container. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a back, shoulder and ankle injury causally related to the May 23, 2006 incident.

On May 30, 2006 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted two reports from Dr. Kusserow dated May 23, 2006. However, neither report is sufficient to establish the claim. In one report, Dr. Kusserow did not provide or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.<sup>7</sup> In the other report, he noted that appellant was a mail sorter and presented with back pain after an injury at work. Dr. Kusserow noted findings upon physical examination of tenderness of the low back and diagnosed back pain. He advised that appellant could return to regular work on May 25, 2006. However, Dr. Kusserow's failed to provide a rationalized opinion regarding the causal relationship which explained how or why the employment incident caused or contributed to a diagnosed condition.<sup>8</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a May 25, 2006 report from Dr. Telep, who noted that appellant was a machine operator and was "jammed" between containers of parcels at work on May 23, 2006. He reported pushing a parcel container when he suddenly stopped and was struck in the back by

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<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>8</sup> *See Jimmie H. Duckett*, *supra* note 6. Furthermore, a diagnosis of pain does not constitute the basis for payment of compensation. *Robert Broome*, 55 ECAB 339 (2004).

another container and subsequently experienced low back, foot and right upper extremity pain. Dr. Telep diagnosed lumbosacral strain, shoulder contusion and foot contusion and advised that appellant could return to work in two days. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related.<sup>9</sup> To the extent that Dr. Telep is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>10</sup>

In other reports dated May 31 to June 23, 2006, Dr. Telep noted appellant's condition improved and diagnosed contusion of the back, right shoulder strain and right ankle strain. He advised that appellant could return to work without restrictions on June 23, 2006 and discharged appellant from his care. Likewise, a report from Dr. Abshire dated June 7, 2006 noted that appellant was injured on May 23, 2006 and diagnosed back contusion, shoulder strain and ankle strain. She returned appellant to modified duty on June 7, 2006. However, these reports are insufficient to establish appellant's claim as the physicians did not provide a history of injury or specifically address how appellant's employment activities had caused or aggravated a diagnosed medical condition.

Appellant submitted a report from a physician's assistant dated June 13, 2006, who noted appellant's treatment for a back injury which occurred at work on May 23, 2006. However, the Board has held that treatment notes signed by a physician's assistant are not considered medical evidence as a physician's assistant is not a physician under the Act.<sup>11</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including an x-ray of the lumbar spine dated May 23, 2006 fail to provide an opinion on the causal relationship between appellant's job and his diagnosed conditions of back, right shoulder strain and right ankle strain. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

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<sup>9</sup> See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>10</sup> See *Jimmie H. Duckett*, *supra* note 6.

<sup>11</sup> See *George H. Clark*, 56 ECAB 162 (2004) (a physician's assistant is not a physician as defined under the Act and any report from such individual does not constitute competent medical evidence). See 5 U.S.C. § 8101(2).

<sup>12</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back, right shoulder and ankle injury causally related to his May 23, 2006 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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