

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

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**W.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fayetteville, NC, Employer**

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**Docket No. 08-896  
Issued: October 14, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 4, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' November 6, 2007 merit decision denying his claim for compensation. Under 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 met his burden of proof in establishing that he sustained an injury on May 5, 2007.

**FACTUAL HISTORY**

On May 5, 2007 appellant, then a 37-year-old letter carrier, filed a claim for compensation alleging that he experienced low back pain that went into his legs while casing mail.<sup>1</sup> He stopped work on May 5, 2007. By letter dated October 2, 2007, the Office advised

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<sup>1</sup> The claim initially began as a claim for a recurrence of disability of an accepted April 11, 2003 lumbar strain under file number 062083088. However, the Office later determined that the matter should be developed as a new traumatic injury claim, number 062197117, which is the claim that is before the Board.

appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a comprehensive medical report from his treating physician who included a reasoned explanation as to how the reported work incident caused or aggravated the claimed injury.

In a June 7, 2007 attending physician's report (Form CA-20), Dr. Dennis Royal, a chiropractor, noted that the low back injury was a recurring injury and appellant complained of low back pain. He first examined appellant on May 7, 2007 and found that he was partially disabled. Dr. Royal diagnosed low back pain with restricted range of motion and lumbar facet syndrome. He opined, with a checkmark "yes," that his conditions were caused or aggravated by employment activity.

In an October 2, 2007 letter, the Office apprised appellant of when chiropractors were considered to be physicians under the Federal Employees' Compensation Act.

The Office received chart notes from Dr. Royal dated July 31 to August 20, 2007. Dr. Royal reported a history of sudden onset of severe lower back pain and inability to stand up and ambulate. An assessment of acute lower backache and chronic diarrhea was provided. Dr. Royal noted that appellant presented with a lower backache. A right lower backache and tenderness of the right S1 joint were assessed. An August 20, 2007 chart note provided no history of injury. An assessment of suggestive right sacroiliitis was provided.

By decision dated November 6, 2007, the Office denied the claim on the grounds that the medical evidence was not sufficient to establish that he sustained an injury related to the May 5, 2007 work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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>4</sup>

Office regulations, at 20 C.F.R. § 10.5(ee) 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

workday or shift.<sup>5</sup> In order to determine whether an employee 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 is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

### ANALYSIS

In the instant case, the Office accepted that the May 5, 2007 incident of casing mail occurred at the time, place and in the manner alleged. Thus, the Board must consider on appeal whether appellant sustained an injury causally related to the May 5, 2007 employment incident.

On October 7, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant, however, did not submit a rationalized medical report from an attending physician addressing how the May 5, 2007 casing mail incident caused or contributed to an injury.

As Dr. Royal's reports, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician as defined under section 8101(2) of the Act.<sup>10</sup> A chiropractor is not considered a physician under the Act unless treatment consists of manual manipulation of a spinal subluxation as demonstrated by x-ray to exist.<sup>11</sup> In this case,

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<sup>5</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> 5 U.S.C. § 8102(c).

<sup>11</sup> See *Mary A. Ceglia*, 55 ECAB 626 (2004).

Dr. Royal did not diagnose a spinal subluxation by x-ray. Therefore, his medical reports do not constitute competent medical evidence in support of appellant's claim. There is no medical evidence of record addressing appellant's current back condition to the May 5, 2007 casing mail incident.

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

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury causally related to his May 5, 2007 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 6, 2007 is affirmed.

Issued: October 14, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>12</sup> *Dennis M. Mascarenas, supra* note 9.