

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

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**I.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lake Mary, FL, Employer**

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**Docket No. 08-1813  
Issued: February 3, 2009**

*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  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 16, 2008 appellant filed a timely appeal from October 4, 2007 and May 1, 2008 decisions of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that she sustained a back or knee condition in the performance of duty.

**FACTUAL HISTORY**

On August 5, 2007 appellant, then a 57-year-old time modified lobby director, filed an occupational disease claim (Form CA-2) asserting that work factors from December 12, 2005 to November 10, 2006 caused or aggravated a back and bilateral knee condition. She attributed her condition to walking, bending, answering the telephone and sitting on a stool. Appellant asserted

that the claimed conditions were also related to December 24, 2002 injuries previously accepted by the Office.<sup>1</sup>

In an August 13, 2007 letter, the employing establishment explained that appellant had work restrictions following the December 24, 2002 injuries. Beginning December 12, 2005, appellant worked six hours a day as a modified lobby director. Her duties involved answering the telephone and assisting customers with lobby machines. The position was rated as sedentary to light duty.

In an August 24, 2007 letter, the Office advised appellant of the evidence needed to establish her claim. It emphasized the importance of submitting a rationalized statement from her attending physician explaining how and why the identified work factors would cause the claimed conditions. Appellant submitted insurance information request forms dated August 2 and 15, 2007.

By decision dated October 4, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. It found that she submitted insufficient evidence regarding her work factors and failed to submit any medical evidence.

In an October 23, 2007 letter, appellant requested a telephonic hearing, held February 15, 2008. At the hearing, she asserted that on November 7, 2006 she experienced increased pain due to the December 2002 injuries. Appellant stopped work on November 10, 2006 and elected disability retirement benefits. She asserted that her physician opined that she sustained a recurrence of disability and not a new injury.<sup>2</sup>

By decision dated and finalized May 1, 2008, an Office hearing representative affirmed the October 4, 2007 decision, finding that appellant did not establish causal relationship as she submitted no medical evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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; that an injury was sustained while in the

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<sup>1</sup> The record indicates that the Office accepted lumbar herniations, lumbar surgery and bilateral meniscal tears with chondromalacia, a cervical strain and a right knee contusion under File No. xxxxxx686. This claim is not before the Board on the present appeal.

<sup>2</sup> The employing establishment submitted comments to the hearing transcript, noting that the Office denied modification of a wage-earning capacity determination in File No. xxxxxx686.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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 medial 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>6</sup>

### ANALYSIS

Appellant claimed that she sustained back and bilateral knee conditions due to sitting, walking and, answering the telephone at work from December 12, 2005 to November 10, 2006. The Board finds that the employing establishment's August 13, 2007 letter establishes these work factors as factual. However, appellant did not submit any medical evidence in support of her claim. She has failed to establish a *prima facie* claim for compensation.<sup>7</sup> Therefore, she did not establish the presence of the claimed conditions or that work factors had any effect on those conditions.<sup>8</sup> As appellant failed to establish causal relationship, the Board will affirm the denial of appellant's claim for compensation.

### CONCLUSION

The Board finds that appellant has not established that she sustained a back or knee condition in the performance of duty.

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<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>7</sup> *See Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *Solomon Polen*, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 1, 2008 and October 4, 2007 are affirmed.

Issued: February 3, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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