

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

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**V.P., Appellant**

**and**

**U.S. POSTAL SERVICE, CINCINNATI BULK  
MAIL CENTER, Cincinnati, OH, Employer**  
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**Docket No. 09-09  
Issued: February 18, 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  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 3, 2008 appellant filed a timely appeal from a September 3, 2008 decision of the Office of Workers' Compensation Programs that denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she has a back condition causally related to factors of her federal employment.

**FACTUAL HISTORY**

This case was previously before the Board. By decision dated May 5, 2008, the Board found that the medical evidence of record was insufficient to establish that appellant sustained an employment-related back condition in November 2006 and affirmed an October 2, 2007 Office

decision.<sup>1</sup> The law and the facts of the previous Board decision are incorporated herein by reference.

On August 3, 2008 appellant, through her attorney, requested reconsideration and submitted a June 19, 2008 report from Dr. Martin Fritzhand, a Board-certified urologist, who advised that he strongly disagreed with the Board's decision, stating that appellant had an employment-related back condition "which would result in considerable pain and discomfort" when performing work duties. Dr. Fritzhand noted that she remained in pain despite work restrictions and described the modified duties she was performing in November 2006 and January 2007. He concluded that "with reasonable medical certainty, there is certainly a causal relationship between her accidents, operative intervention and the persistence of low back pain despite the described work medications."

By decision dated September 3, 2008, the Office denied modification of the prior merit decision. It found that Dr. Fritzhand's June 19, 2008 report contradicted his report dated June 1, 2007, noting that he had performed a single physical examination in June 2007 and did not review her prior medical record.

### **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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>3</sup>

Office regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."<sup>4</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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale

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<sup>1</sup> Docket No. 08-250 (issued May 5, 2008).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> 20 C.F.R. § 10.5(ee).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</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>7</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>8</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related back condition in November 2006. In the June 19, 2008 report, Dr. Fritzhand opined that appellant's back condition was employment related and described the modified duties she was performing in November 2006.<sup>9</sup> The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty but it cannot be speculative and must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>10</sup>

While Dr. Fritzhand advised in a June 19, 2008 report that appellant's continued low back pain was caused by her November 2006 work activities, he did not provide a firm diagnosis or explain the mechanics of injury as to how her relatively sedentary duties caused her condition. A diagnosis of "pain" does not constitute the basis for the payment of compensation.<sup>11</sup> The Board therefore finds that appellant failed to provide sufficient rationalized medical evidence to

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Id.*

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> At the time appellant filed her claim in November 2006, her job duties consisted of flipping letters, one at a time, so that they were arranged, with a five-pound lifting restriction and no prolonged sitting.

<sup>10</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>11</sup> *Robert Broome*, 55 ECAB 339 (2004).

establish that her back condition in November 2006 was caused or aggravated by employment factors.

**CONCLUSION**

The Board finds that appellant did not establish that she sustained an employment-related back condition in November 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 3, 2008 be affirmed.

Issued: February 18, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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