

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

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N.S., Appellant )

and )

U.S. POSTAL SERVICE, J.T. WEEKER )  
INTERNATIONAL SERVICE CENTER, )  
Chicago, IL, Employer )

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**Docket No. 08-2546  
Issued: May 7, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 4, 2008 appellant timely appealed a June 25, 2008 Office of Workers' Compensation Programs' merit decision denying modification of a July 5, 2007 merit decision, and an April 15, 2008 nonmerit decision. Pursuant to 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 established that she sustained an injury in the performance of duty on April 28, 2003.

**FACTUAL HISTORY**

On May 16, 2003 appellant, a 46-year-old flat sorter machine (FSM) operator filed a traumatic injury claim (Form CA-1). She alleged that she strained her back on April 28, 2003 while loading a FSM machine. Appellant filed a notice of recurrence (Form CA-2a) on May 15,

2007, alleging that her limited, light-duty federal employment caused a recurrence of her back condition.

By letter dated May 23, 2007, the Office notified appellant that it had not developed her original traumatic injury claim because it appeared that the injury alleged was minor and no time was lost from work. It stated that it would process her traumatic injury claim, but that the evidence currently of record was insufficient to support her claim and requested that she submit comprehensive medical evidence.<sup>1</sup>

Appellant submitted no further evidence in support of her claim, and by decision dated July 5, 2007, the Office denied her claim, concluding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty on April 28, 2003.

Appellant disagreed, and on April 8, 2008, she requested reconsideration.

Appellant submitted no new evidence and did not raise a new legal question. By decision dated April 15, 2008, the Office denied reconsideration.

Appellant again disagreed with the Office's decision and requested reconsideration on May 23, 2008.

In support of this request for reconsideration, appellant submitted a December 16, 2003 report signed by a physician whose name is illegible. This report proffered a diagnosis of lumbar strain. In a May 29, 2006 report, Dr. Alison Pryce, a Board-certified diagnostic radiologist, reported findings from an MRI scan of appellant's pelvis. She asserted that the MRI scan revealed no abnormalities. Appellant underwent an MRI scan examination of the lumbar spine on June 1, 2006. Dr. Ajay C. Mehta, a Board-certified radiologist, reported that appellant had mild to moderate disc bulge/protrusion at L5-S1, which was unchanged from the previous study of March 21, 2004 but had significant change at L4-5. Appellant now had a large focally extruded fragment which was affecting the thecal sac and the exiting nerve root. She submitted a June 2, 2006 medical report from Dr. Javaid Iqbal, a Board-certified neurologist, reported that nerve conduction studies of both legs revealed no abnormality. Dr. Iqbal reported that appellant probably has left-sided upper lumbar plexopathy leading to weakness involving the left iliopsoas and quadriceps muscles. The Office also received a February 26, 2007 report from Jason Gorska, a physical therapist, who noted that appellant had been seen for eight visits beginning January 11, 2007 for low back pain.

By decision dated June 25, 2008, the Office denied modification of its prior decision because the evidence of record was insufficient to establish that appellant sustained a traumatic injury in the performance of duty on the date alleged.

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<sup>1</sup> The Board notes that appellant submitted leave analysis documents. As they were illegible, they are of no probative value.

## 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 filed within the 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.<sup>3</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>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<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>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>6</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<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).

## ANALYSIS

While the Office accepted that the employment-related event occurred as alleged, that is that she did load an FSM machine on April 28, 2003, the Board finds that appellant failed to meet her burden of proof in establishing that she sustained a compensable employment-related injury in the performance of duty on April 28, 2003. The record reflects that appellant submitted a collection of medical reports from several physicians which substantiate that as of June 2006 appellant had disc herniation at L4-5 and diffuse disc bulge/protrusion at L5-S1, as well as left-sided upper lumbar plexopathy. However, these reports are of limited probative value as none of the reports contains an opinion concerning the causal relationship.<sup>10</sup>

To establish a causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, explain whether the employment injury caused or aggravated the diagnosed condition and presents a medical rationale in support of his or her opinion.<sup>11</sup>

Furthermore, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference or presumption that there is a causal relationship between the two.<sup>12</sup> Neither the fact that the condition became apparent during a period of federal employment nor the belief that the condition was caused or aggravated by an employment incident or factor(s) is sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.<sup>14</sup>

The report from Mr. Gorska, a physical therapist, is of no probative value as a physical therapist is not a "physician" within the meaning of section 8101(2) and cannot render a medical opinion.<sup>15</sup>

None of the medical reports of record state a history, findings upon examination or express an opinion as to the causal link between this diagnosed condition and factors of appellant's federal employment and as such are insufficient to satisfy appellant's burden.

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<sup>10</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value). *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>11</sup> *D.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-27, issued April 6, 2007); *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007).

<sup>12</sup> *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>13</sup> *Id.*

<sup>14</sup> *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations did not constitute evidence of a sufficiently substantial nature); *Samuel Buchanan*, 7 ECAB 441 (1955).

<sup>15</sup> *Vicky C. Randall*, 51 ECAB 357 (2000).

Appellant failed to submit such evidence and the Office therefore properly denied her claim for compensation.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a traumatic injury in the performance of duty on April 28, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board