

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Malta, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-1615
Issued: April 12, 2010**

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 10, 2009 appellant filed a timely appeal from June 19, 2008 and April 23, 2009 decisions of the Office of Workers' Compensation Programs denying his claim for a traumatic injury on December 12, 2007. 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 sustained an injury on December 12, 2007 while in the performance of duty.

FACTUAL HISTORY

On May 4, 2008 appellant, then a 37-year-old rural carrier, filed a traumatic injury claim alleging that on December 12, 2007 he was injured when his delivery vehicle was struck from behind by another vehicle. He stated that his whole body jerked forward causing pain. The day after the accident he had pain and discomfort in his back, neck, shoulders, legs and hips. A December 12, 2007 employing establishment accident report noted that another driver was

pulling out from a side road when she clipped the right rear fender of appellant's vehicle that was traveling on the main road. There was minor damage to the vehicles and no injuries were reported.

In a February 6, 2008 report, Dr. Alfredo B. Cruz, a physician specializing in geriatrics, stated that appellant was not able to work the previous week due to congestion, chills and fever. He noted that appellant had rheumatoid arthritis, which might affect his immune system and resistance to disease. Appellant also complained of persistent right leg pain and was scheduled for venous Doppler studies. In an April 29, 2008 report, Dr. Cruz stated that appellant had been a patient for several years. Lately, appellant had been experiencing a great deal of back pain. He was referred to a rheumatologist who tentatively diagnosed rheumatoid arthritis or ankylosing spondylitis. Dr. Cruz stated that "at one time while working [appellant] had a motor vehicle accident which he thinks ... aggravated his pain." However, appellant was not able to seek medical treatment because "he was not allowed by his job." Pain medications were not effective and a second rheumatologist recommended a pain management clinic.

By letter dated May 20, 2008, the Office asked appellant to submit additional evidence, including medical evidence establishing causal relationship between the December 12, 2007 motor vehicle accident and a diagnosed medical condition. Appellant submitted copies of x-ray reports taken December 12, 2007 of his lumbosacral spine and pelvis. The x-rays revealed no fracture or other acute bone abnormality.

On June 13, 2008 the employing establishment challenged appellant's claim on the grounds that he failed to establish that he sustained an injury on December 12, 2007 in the performance of duty.

By decision dated June 19, 2008, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an injury on December 12, 2007 as a result of the motor accident.

On June 30, 2008 appellant requested an oral hearing. A telephonic hearing was held on February 10, 2009.

In a March 19, 2009 response to the hearing transcript, the employing establishment denied that appellant advised management that he needed a medical appointment for a work-related injury.

Following the hearing, appellant submitted additional evidence. In clinical notes dated December 18, 2007, Dr. Cruz provided a history that his delivery vehicle was rear-ended on December 12, 2007. Appellant did not seek emergency treatment because he thought his back pain would go away. He had tenderness in his lumbar spine and bruising, especially on his right hip. Dr. Cruz diagnosed contusions of the back, buttocks and right thigh and low back pain. In notes dated January 30, 2008, he stated that appellant had back pain as a result of the accident when his delivery vehicle was rear-ended. Dr. Cruz diagnosed low back pain and contusions of the back, buttocks and thighs. In a motor vehicle accident report dated January 24, 2008 and received by the Office on July 11, 2008, appellant alleged that he was injured on December 12, 2007 when his delivery vehicle was struck from behind by another vehicle pulling out from a

side road while his vehicle was moving forward to the next mailboxes on his route. On March 22, 2008 appellant had a magnetic resonance imaging (MRI) scan of his lumbar spine that was reported as normal.

In reports dated April 1 to July 29, 2008, received by the Office on April 1, 2009, Dr. Robert M. Romaine, a podiatrist, discussed his treatment of appellant's nonwork-related left foot problems. In regard to appellant's complaint of low back pain, Dr. Romaine instructed him to consult his attending physician for that problem, Dr. Cruz. In a March 17, 2009 report, Dr. Romaine stated that appellant had pain in his back, hip and left leg radiating to the left foot, that he asserted was aggravated by his job requirements, including delivering mail, heavy lifting and prolonged driving and walking. Appellant stated that on December 12, 2007 he was involved in a motor vehicle accident and experienced pain in his neck, back, hips and legs. Following the accident, his back and leg pain was aggravated by his physical job requirements. Dr. Romaine opined that appellant's back and leg pain was aggravated by his job as a rural carrier.

In a statement received by the Office on February 10, 2009, appellant stated that on December 12, 2007 he was hit hard on the driver's side of his vehicle and his whole body jerked forward causing pain and discomfort. He called the employing establishment and an acting supervisor went to the scene to investigate. Appellant asked permission to see a physician the following day but a supervisor told him there was no one to cover his job and they needed him to work the next day. The supervisor advised appellant to tell his physician that he had a workers' compensation injury but it was not necessary to fill out any papers. Appellant alleged that management knew of the accident when it occurred but did not timely give him instructions on how to file a compensation claim. The employing establishment denied that appellant advised management that he needed a medical appointment for a work-related injury.

By decision dated April 23, 2009, an Office hearing representative affirmed the June 19, 2008 decision.¹

LEGAL PRECEDENT

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.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An

¹ Subsequent to the April 23, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained an injury on December 12, 2007 while in the performance of duty.

On May 20, 2008 appellant alleged that, on December 12, 2007, five months earlier, he was injured when his delivery vehicle was struck from behind by another vehicle. He stated that his whole body jerked forward causing pain. The day after the accident appellant alleged pain and discomfort in his back, neck, shoulders, legs and hips. X-rays taken December 12, 2007 of appellant's lumbosacral spine and pelvis revealed no fracture or other abnormality. The Office advised appellant that he needed to submit medical evidence establishing causal relationship between the December 12, 2007 motor vehicle accidents and a diagnosed medical condition.

In clinical notes dated December 18, 2007, Dr. Cruz provided a history that appellant's delivery vehicle was rear-ended on December 12, 2007. Appellant did not seek emergency treatment because he thought his back pain would go away. He had tenderness in his lumbar spine and bruising, especially on his right hip. Dr. Cruz diagnosed contusions of the back, buttocks and right thigh and low back pain. On January 30, 2008 he stated that appellant had back pain as a result of the accident when his delivery vehicle was rear-ended. Dr. Cruz diagnosed low back pain and contusions of the back, buttocks and thighs. On March 22, 2008 appellant had an MRI scan of his lumbar spine that was reported as normal. In April 2008, Dr. Cruz stated that appellant had been experiencing a great deal of back pain. He was referred to a rheumatologist who tentatively diagnosed rheumatoid arthritis or ankylosing spondylitis.

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

Dr. Cruz stated that “at one time while working [appellant] had a motor vehicle accident which he thinks ... aggravated his pain.” There are several deficiencies in his reports. Dr. Cruz did not appear to have a complete and accurate factual background of the December 12, 2007 motor vehicle accident. The accident report prepared on December 12, 2007 stated that it was a minor accident with little damage to the vehicles and no reported injuries. It was not until appellant filed a claim in May 2008, more than four months later, that he stated that his whole body jerked forward at the time of the accident causing pain and discomfort. Dr. Cruz did not make a specific diagnosis of the medical condition causing appellant’s back and leg pain. In fact, a rheumatologist to whom he referred appellant made a tentative diagnosis of rheumatoid arthritis or ankylosing spondylitis with no reference to a traumatic injury on December 12, 2007. Dr. Cruz did not explain the mechanism of injury, *i.e.*, what occurred in the course of the accident on December 12, 2007 to cause physical injury. He noted that appellant believed that the December 12, 2007 motor vehicle accident caused or aggravated his back and leg pain but Dr. Cruz himself did not provide a rationalized medical opinion, based on a complete and accurate factual and medical background, explaining how appellant sustained an injury causally related to the December 12, 2007 motor vehicle accident. As noted, neither the fact that an employee’s claimed condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship. Due to these deficiencies, the reports of Dr. Cruz are not sufficient to establish that appellant sustained an injury causally related to the December 12, 2007 motor vehicle accident.

In a March 17, 2009 report, Dr. Romaine stated that appellant had pain in his back, hip and left leg radiating to the left foot that he asserted was aggravated by his job requirements, including delivering mail, heavy lifting and prolonged driving and walking. Appellant stated that on December 12, 2007 he was involved in a motor vehicle accident and experienced pain in his neck, back, hips and legs. Following the accident, he alleged that his back and leg pain was aggravated by his physical job requirements. Dr. Romaine opined that appellant’s back and leg pain was aggravated by his job as a rural carrier. Dr. Cruz was the primary physician treating appellant’s back and leg pain. Dr. Romaine was treating appellant’s left foot condition. Furthermore, appellant filed a claim for a traumatic injury alleging that the motor vehicle accident on December 12, 2007 caused an injury when his body jerked forward. Dr. Romaine provided no diagnosis for a December 12, 2007 traumatic injury. He opined only that appellant’s day-to-day job requirements aggravated his back and leg pain. Dr. Romaine did not provide any details of the December 12, 2007 motor vehicle accident or a specific diagnosis, nor did he explain the mechanism of injury, how the motor vehicle accident caused appellant’s back and leg pain. Due to these deficiencies, Dr. Romaine’s opinion is not sufficient to establish that appellant sustained a medical condition causally related to his December 12, 2007 motor vehicle accident.

The Office advised appellant of the medical evidence needed to establish that he sustained an injury on December 12, 2007 causally related to his employment. Appellant did not provide such medical evidence. There is no medical evidence of record containing a complete and accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant’s back and leg pain was causally related to the December 12, 2007 motor vehicle accident. Therefore, the Office properly denied his claim.

On appeal, appellant contends that the Office's decisions are contrary to fact and law. As noted, however, he failed to provide probative medical evidence establishing that he sustained an injury on December 12, 2007 causally related to his employment. The Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on December 12, 2007 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 23, 2009 and June 19, 2008 are affirmed.

Issued: April 12, 2010
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