

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

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S.F., Appellant )  
and ) Docket No. 09-1648  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: February 24, 2010  
Willowick, OH, Employer )  
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)

*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 22, 2009 appellant, through counsel, filed a timely appeal of the merit decision of the Office of Workers' Compensation Programs dated June 4, 2009 denying modification of its prior decisions denying appellant's claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

**FACTUAL HISTORY**

This case has previously been before this Board. In a decision dated July 3, 2008, the Board affirmed the Office's February 27 and November 16, 2007 denials of appellant's occupational disease claim, wherein he alleged that, during the week of September 17, 2004, after carrying heavy mail for that week, he "literally could not get up." The Board found that appellant failed to establish that his lumbar condition was caused or aggravated by his work

duties, as alleged. The facts and law as set forth in the Board's prior decision are hereby incorporated by reference.<sup>1</sup>

By letter dated March 3, 2009, appellant requested reconsideration and submitted a new September 12, 2007 medical note wherein Dr. David C. Parris, appellant's Board-certified internist, noted that he had been following appellant with regard to his back injury. He noted, "Because of the sequence of events, I believe that it is reasonable to believe that the herniated disc is a result of his back injury." Dr. Parris noted that appellant's symptoms of sciatica did not exist before the injury and herniated disc can cause sciatica. In an October 24, 2008 opinion, he opined that appellant's herniated disc was due to his work injury. Dr. Parris noted that appellant first saw him on January 7, 2004 at which time he gave a history of slipping on ice while walking his route on December 13, 2003. He diagnosed lumbosacral strain. Dr. Parris noted that, at the time of appellant's visit on September 2, 2004, his condition worsened. Because of appellant's continued pain, he noted that appellant had a magnetic resonance imaging (MRI) scan that showed a herniated disc at L4-L5. Dr. Parris opined, "Because of the fact that [appellant] had been doing better and was actually pain free until the incident in August [2004] and because of the fact that he had continued pain in the back and leg since then, I believe that it is reasonably certain that the herniated disc found on the MRI [scan] is particularly from his work injury."

By decision dated June 4, 2009, the Office reviewed appellant's claim on the merits but determined that the newly submitted medical evidence was not sufficient to support that his current medical condition was connected to the employment duties described in the initial history for the claim.

#### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> including that he is an "employee" within the meaning of the Act<sup>4</sup> and that he filed his claim within the applicable time limitation.<sup>5</sup> To establish that an injury was sustained in the performance of duty in a claim for an occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is

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<sup>1</sup> S.F., Docket No. 08-584 (issued July 3, 2008).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> J.P., 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); Joseph M. Whelan, 20 ECAB 55, 57 (1968).

<sup>4</sup> See M.H., 59 ECAB \_\_\_\_ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

<sup>5</sup> R.C., 59 ECAB \_\_\_\_ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

causally related to the employment factors identified by the employee.<sup>6</sup> The medical evidence 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>

### **ANALYSIS**

The Board finds that appellant failed to meet his burden of proof to establish a *prima facie* claim for compensation. Although the Office had previously accepted that appellant engaged in lifting and carrying mail as a letter carrier, the Office denied the claim because he failed to establish an injury as a result of these work activities through the submission of rationalized medical evidence. The Board found in its July 3, 2008 decision that appellant failed to establish a causal relationship between the work activities he performed during the week of September 17, 2004 and his lumbar condition.<sup>8</sup> Subsequently, appellant submitted two new reports by his treating physician, Dr. Parris. Neither of these reports, however, is sufficient to establish that appellant sustained a work-related injury as a result of heavy lifting or other employment activities during the week of September 17, 2004. Although Dr. Parris opined in his September 12, 2007 report that he believed appellant's herniated disc was the result of his back injury, he did not discuss appellant's condition the week of September 17, 2004 nor did he specifically link appellant's back condition to his employment duties. In his October 24, 2008 report, Dr. Parris discussed appellant's prior slip on ice that occurred on December 13, 2003. He also noted that appellant's condition had worsened as of the time of his September 2, 2004 visit. However, in his claim, appellant noted back pain the week of September 17, 2004, two weeks after his September 2, 2004 visit with Dr. Parris. The Board notes that Dr. Parris references an August 2004 incident, which is not mentioned in appellant's claim. Furthermore, although Dr. Parris indicated that it was reasonable to believe appellant's herniated disc was due to his work injury, he did not discuss appellant's work duties. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant'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.<sup>9</sup> As appellant failed to provide medical evidence establishing a causal relationship between a medical condition and his claimed employment factors, the Office properly denied his claim.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

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<sup>6</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> *Solomon Polen*, 51 ECAB 441 (2000); see also *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> S.F., *supra* note 1.

<sup>9</sup> D.I., 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 4, 2009 is affirmed.

Issued: February 24, 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