

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

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**B.C., Appellant**

**and**

**U.S. POSTAL SERVICE, ROXANNE H. JONES  
STATION, Philadelphia, PA, Employer**

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**Docket No. 09-1023  
Issued: January 20, 2010**

*Appearances:*  
*Thomas R. Uliase, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 9, 2009 appellant, through her attorney, filed a timely appeal of the December 24, 2008 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain an injury while in the performance of duty. 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 has established that she sustained back and left knee injuries on August 19, 2006, as alleged. On appeal, counsel contended that the uncontroverted medical reports of Dr. Roy T. Lefkoe, an attending Board-certified orthopedic surgeon, were sufficient to either reverse the Office's decision and remand the case for payment of compensation or set aside the decision and remand the case for further development of the medical evidence.

## **FACTUAL HISTORY**

On October 12, 2006 appellant, then a 49-year-old automated clerk, filed a traumatic injury claim alleging that on August 19, 2006 she reinjured her lower back and both legs due to constant bending and lifting trays at work.<sup>1</sup> She stopped work on August 19, 2006. In an October 12, 2006 narrative statement, appellant related that on August 19, 2006 she lifted and separated heavy trays of mail before placing them inside an all-purpose container (APC). The trays had to be separated because they contained two zones of mail. Appellant experienced a lot of pain and numbness from her lower back down the side of both legs.

By letter dated January 3, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested factual and medical evidence, including a rationalized medical report from an attending physician which described a history of injury, a firm diagnosis, findings, symptoms and test results treatment provided, prognosis, period and extent of disability and opinion with medical reasons on why the diagnosed condition was caused or aggravated by the alleged August 19, 2006 employment incident.

Treatment notes of Mark Greenwood and Brent Stuart, physical therapists, addressed the treatment of appellant's low back pain and radiculopathy from March 22 through May 24, 2006.

In a January 18, 2007 narrative statement, appellant related that she reported the claimed injury on August 19, 2006 to Tashia Williams, a supervisor, and Lou Barretta, a coworker. The injury occurred because she was left to unload heavy trays of mail from the APC due to heavy mail volume and a staff shortage on August 19, 2006. Appellant twisted her left knee as a result of bending and twisting to lift the trays. She described her symptoms and medical treatment.

In a December 23, 2006 narrative statement, Lucretia Watson, a customer service supervisor, controverted appellant's claim stating that no supervisor was notified about the claimed injury. Ms. Watson contended that appellant was well aware of the required duties of her current position when she placed a bid for the job.

Unsigned hospital records dated January 12, 2007 stated that appellant complained about chronic pain.

By decision dated February 5, 2007, the Office denied appellant's claim. It found the evidence insufficient to establish that the incident occurred as alleged and that she sustained a medical condition causally related to the claimed incident. In a February 12, 2007 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative.

In a January 18, 2007 prescription, Dr. Lefkoe ordered therapeutic treatment and procedures for appellant's multilevel lumbar degenerative disc disease. In a January 18, 2007 medical report, he reviewed the history of, among other things, the alleged August 19, 2006

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<sup>1</sup> Prior to the instant claim, appellant filed a claim, Office File No. xxxxxx195, for neck, low back and shoulder injuries she sustained on May 25, 1989. She also filed a claim, Office File No. xxxxxx606 for aggravation of her neck, right shoulder and hand conditions which she sustained on March 28, 2006. The Board notes that the record does not indicate whether appellant's claims were accepted by the Office.

employment incident and medical treatment. On August 19, 2006 appellant was working alone performing increased work, sorting two zip codes of bulky mail. She bent over to pick up a tray and experienced sharp low back pain radiating into both legs. Appellant also experienced left knee pain. Dr. Lefkoe stated that her complaints of low back pain radiating into both legs had worsened since the August 19, 2006 incident and was aggravated by standing. After reporting findings on physical examination, he diagnosed multilevel lumbar degenerative disc disease with L3-4 spinal stenosis, protruding discs at L3-4, L4-5 and L5-S1 and shallow midline disc herniation L5-S1. Dr. Lefkoe also diagnosed degenerative arthritis of the left knee.

In a May 31, 2007 report, Dr. Lefkoe reported the history that, following the May 25, 1989 injury, appellant was diagnosed as having disc herniations and bilateral sciatica. While performing light-duty work on August 19, 2006 and still receiving treatment for the May 25, 1989 injury, she was forced to perform increased amounts of repetitive bending, lifting and twisting due to a staff shortage and need to work two zip codes of mail. Dr. Lefkoe related that in a patient with a severe preexisting low back condition, “the mechanism of injury described was almost certain to produce a new injury.” He opined that appellant’s immediate complaints of severe back pain radiating into her legs and numbness, and tingling in her legs were consistent with the described injury. Dr. Lefkoe further opined that she had not recovered from the August 19, 2006 injury and that she remained totally disabled for work. Appellant’s prognosis was extremely guarded.

Reports and treatment notes from Mr. Greenwood and Mike Wood, Stephanie Banks and Jenifer Kane, physical therapists, addressed the treatment of appellant’s lumbar degenerative disc disease, sciatica and left leg osteoarthritis from September 22, 2006 to February 5, 2007.

By decision dated July 31, 2007, an Office hearing representative affirmed the February 5, 2007 decision. He found the evidence insufficient to establish that appellant sustained an injury in the performance of duty on August 19, 2006.

In a June 11, 2008 letter, appellant, through counsel, appealed to the Board. By July 24, 2008 letter, counsel asked to withdraw appellant’s appeal so that she could request reconsideration from the Office. The Board issued an order dismissing appeal on November 21, 2008.<sup>2</sup>

On reconsideration, appellant submitted Dr. Lefkoe’s July 9, 2008 report which reiterated his prior history of the August 19, 2006 employment incident. Dr. Lefkoe stated that such history was a classic mechanism for aggravation of back pain. The repetitive bending induced inflammation in the disc and nerve roots. The facet joints also became inflamed and painful. Dr. Lefkoe stated that appellant’s preexisting lumbar conditions were aggravated by the stated mechanism of injury.

By decision dated December 24, 2008, the Office denied modification of the July 31, 2007 decision. It found the factual evidence sufficient to establish that the August 19, 2006 incident occurred as alleged. However, the medical evidence failed to establish that appellant sustained an injury causally related to the accepted August 19, 2006 employment incident.

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<sup>2</sup> Docket No. 08-1871 (issued November 21, 2008).

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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>6</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>9</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>10</sup>

## ANALYSIS

The Office accepted that appellant engaged in constant bending and lifting of trays on August 19, 2006 while working as an automated clerk at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that her

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>7</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>9</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>10</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

back and left knee conditions were caused or aggravated by the August 19, 2006 employment incident.

The treatment notes and report from appellant's physical therapists have no probative medical value in establishing appellant's claim. Physical therapists are not considered to be physicians as defined under the Act.<sup>11</sup>

The unsigned January 12, 2007 hospital records stating that appellant complained about chronic pain are also insufficient to establish her claim. The Board has held that reports submitted that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence, in that they lack proper identification as to whether they were prepared by physicians.<sup>12</sup>

Dr. Lefkoe's January 18, 2007 prescription ordered therapeutic treatment and procedures for appellant's multilevel lumbar degenerative disc disease. His January 18, 2007 report found that her low back pain radiating into both legs had worsened since the August 19, 2006 employment incident and was aggravated by standing. Appellant also suffered from left knee pain. Dr. Lefkoe provided findings on physical examination and opined that she sustained multilevel lumbar degenerative disc disease with L3-4 spinal stenosis, protruding discs at L3-4, L4-5 and L5-S1 and shallow midline disc herniation L5-S1. Appellant also sustained degenerative arthritis of the left knee. This evidence, however, does not discuss how the diagnosed conditions were caused or contributed to by the accepted August 19, 2006 employment incident. As Dr. Lefkoe's prescription and report do not contain a reasoned medical opinion regarding the cause of appellant's current back and left knee conditions, they are insufficient to establish that she sustained an employment injury causally related to the accepted employment incident.<sup>13</sup>

Dr. Lefkoe's May 31, 2007 report opined that the August 19, 2006 employment incident was "almost certain to produce a new injury" in appellant as she had a severe preexisting low back condition. He further opined that her immediate complaints of severe back pain radiating into her legs and numbness, and tingling in her legs were consistent with the accepted employment incident. Dr. Lefkoe concluded that appellant had not recovered from her August 19, 2006 injuries and she remained totally disabled for work. However, his opinion regarding the cause of appellant's back and leg conditions is speculative and unsupported by rationalized medical evidence explaining the nature of the relationship between her back and leg conditions and the accepted employment incident.<sup>14</sup> Moreover, Dr. Lefkoe did not specifically provide a diagnosis of a back or leg condition other than pain causally related to the accepted employment incident. The Board has held that a diagnosis of pain, without more by way of

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<sup>11</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006).

<sup>12</sup> See *R.M.*, 59 ECAB \_\_\_ (Docket No. 08-734, issued September 5, 2008); *Richard Williams*, 55 ECAB 343 (2004).

<sup>13</sup> See *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>14</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

rationale, does not constitute the basis for the payment of compensation.<sup>15</sup> As Dr. Lefkoe's report does not contain a diagnosed condition and a reasoned medical opinion on causal relationship with the August 19, 2006 employment incident, it is insufficient to establish that appellant sustained an employment injury causally related to the August 19, 2006 employment incident.<sup>16</sup>

While Dr. Lefkoe opined in his July 9, 2008 report that appellant's preexisting lumbar conditions were aggravated by the August 19, 2006 employment incident as repetitive bending induced inflammation in the disc, nerve roots and facet joints which was painful, he provided insufficient medical rationale explaining the mechanism of injury and causal relationship. He did not describe how inflammation in appellant's back was caused by the accepted employment incident and how it resulted in pain. As noted, a diagnosis of pain does not constitute the basis for the payment of compensation.<sup>17</sup> The Board finds that Dr. Lefkoe's report is insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained back and left knee injuries causally related to the accepted August 19, 2006 employment incident. Appellant did not meet her burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained back and left knee injuries while in the performance of duty on August 19, 2006, as alleged.

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<sup>15</sup> See *C.F.*, 60 ECAB \_\_ (Docket No. 08-1102, issued October 10, 2008) (pain is a symptom, not a compensable medical diagnosis); *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>16</sup> *Willie M. Miller*, *supra* note 13.

<sup>17</sup> See *C.F.*, *supra* note 15.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 24, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board