

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dayton, OH, Employer**

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**Docket No. 09-1189
Issued: January 25, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2009 appellant filed a timely appeal from the March 16, 2009 merit decision of the Office of Workers' Compensation Programs concerning the denial of an employment injury. 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 met his burden of proof to establish that he sustained an injury in the performance of duty on March 20, 2006.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on April 16, 2008 affirming an April 9, 2007 Office decision finding that appellant did not sustain an employment-

related injury on March 20, 2006.¹ The Board found that, although he established the existence of a March 20, 2006 employment incident, the Office properly found that he did not submit a rationalized medical report showing that he sustained a medical condition due to that incident. It noted that appellant sustained injury to his low back while in military service, but that the medical evidence did not provide any explanation based on reasonable medical certainty detailing how his low back degenerative disc disease was aggravated or contributed to by the March 20, 2006 slip in snow. Dr. Charles M. McIntosh, an attending Board-certified emergency medicine physician, who was the first to treat appellant after March 20, 2006, noted a myofascial strain of the low back after an April 4, 2006 examination, but he did not provide any explanation of how the strain was related to the accepted employment incident. Dr. Kingsley A. Ozoude, an attending Board-certified radiologist, saw appellant on January 19, 2007 and stated that he thought appellant's symptoms were "the result of a fall on March 20, 2006." The Board found that this opinion was inaccurate as appellant made it clear he did not fall on March 20, 2006 and noted that Dr. Ozoude provided no rationale for his stated conclusion on causal relationship. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Appellant submitted a July 23, 2008 report of Dr. Girija Gopalswamy, an attending Board-certified internist,² who noted that appellant reported a service-related injury of 1997 which resulted in a diagnosis of a bulging lumbar disc. Dr. Gopalswamy indicated that appellant reported that he was "medically boarded" out of the army due to his back condition and continued to have back pain while working as a letter carrier. Appellant reported that, from the time of his discharge from the military until March 20, 2006 (when he slipped on ice at work and twisted his back), his back pain stayed about the same at 5 out of a scale of 10. After March 20, 2006, he reported an increase in back pain and moderate spasm in the lower lumbar area bilaterally with decreased range of motion of the lumbar spine. Dr. Gopalswamy noted that appellant slowly got out of his chair in the waiting room and walked slowly into the examination room. Upon examination, appellant exhibited some loss of lordosis and decreased range of motion upon extension, forward flexion, bilateral lateral flexion, and bilateral lateral rotation, mild paralumbar spasm upon flexion and normal motor and sensory function. Dr. Gopalswamy described x-ray findings from July 23, 2008 demonstrating "early degenerative changes in the form of spurs from the lumbar vertebral bodies" and diagnosed chronic lumbar strain, moderate, with early degenerative disc disease and spurring of the lumbar vertebrae. She stated, "The injury he suffered working for the [employing establishment] most likely aggravated the service-connected lumbar condition." The report ended by stating that it was felt that appellant exaggerated his pain during the examination in that he never showed any facial expressions of severe pain. Appellant was observed walking from the examination room to the waiting room with a quicker pace and a gait that was "almost normal."

Appellant also submitted a December 18, 2008 report of Dr. Martin Fritzhand, an attending Board-certified preventive medicine physician, who noted that appellant reported that on

¹ Docket No. 07-1415 (issued April 16, 2008). On April 4, 2006 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that he injured his low back on March 20, 2006 when he slipped on ice while walking his postal route. He indicated that he did not fall to the ground but that he twisted his back. Appellant stopped work on April 4, 2006.

² The report was also produced and signed by Ken Abney, an attending physician's assistant.

March 20, 2006 he slipped on ice at work and twisted his back and described the medical care he initially received for his back in April 2006. Dr. Fritzhand indicated that appellant complained of continuing back pain that progressively worsened and indicated that magnetic resonance imaging (MRI) scan testing from December 2006 showed degenerative changes of the low back compatible with his age and a condition that was not amenable to surgical intervention.”³ X-ray testing from July 2008 revealed spurs at L2, L3 and L4. Dr. Fritzhand stated that appellant reported injuring his back during military service 10 years prior but asserted that he was “basically pain free” from 2003 until the March 20, 2006 incident. Appellant now complained of a constant sharp to dull low back pain radiating to his hips. Dr. Fritzhand stated that on examination appellant ambulated with a normal gait and was comfortable sitting and in the supine position. Appellant had normal spine curvature, tenderness to palpation throughout the low back region, difficulty forward bending, decreased range of motion upon extension and flexion, diminished straight leg raise to 50 degrees bilaterally, diminished range of motion of the hips with knees flexed to 90 degrees bilaterally, and intact strength and sensory function. Dr. Fritzhand noted that appellant had a “well-documented injury” to his low back in 2006 and experienced persistent musculoskeletal distress since that time which has gotten worse with each day. He stated:

“The patient has a well-documented underlying back condition characterized as degenerative joint disease, lumbar spine with chronic low back pain and this latest injury (March 2006) is obviously an aggravation of the degenerative joint/disease/facet arthropathy with chronic low back pain. His history is clear that low back pain had essentially ceased by 2003 only to recur directly following his March 2006 injury. This was described to me by [appellant] and also noted by Dr. Poelstra and the [Veterans Administration].... The patient has certainly demonstrated sufficient evidence to establish that he sustained a specific incident at the time, place, and in the manner alleged and that the incident resulted in an exacerbation of his low back pain. His history could not be clearer. The patient had ongoing low back pain dating to the March 2006 accident which led directly to medical care not sought out for his low back during the previous three years.”

In a March 16, 2009 decision, the Office found that appellant did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on March 20, 2006. It found that Dr. Gopalswany and Dr. Fritzhand did not provide adequate medical rationale for their opinions that appellant’s preexisting back condition was aggravated on March 20, 2006.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ 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

³ Dr. Fritzhand indicated that the testing was obtained by Dr. Raymond Poelstra, an attending Board-certified neurosurgeon.

⁴ 5 U.S.C. §§ 8101-8193.

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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁹

ANALYSIS

In the present case, the Office properly determined that on March 20, 2006 appellant sustained an employment incident when he slipped on ice while walking his postal route. Appellant twisted his back during the incident but he did not fall to the ground. The Board finds that the Office also properly determined that appellant did not submit sufficient medical evidence to establish that he sustained a medical condition due to this incident.

In a July 23, 2008 report, Dr. Gopalswamy, an attending Board-certified internist,¹⁰ stated that, upon examination, appellant exhibited some decreased range of motion on various back motions, mild paralumbar spasm upon flexion, and normal motor and sensory function. She stated that x-ray findings from July 23, 2008 demonstrated degenerative changes in the form of spurs from the lumbar vertebral bodies and diagnosed chronic lumbar strain, moderate, with early degenerative disc disease and spurring of the lumbar vertebrae. Dr. Gopalswamy noted, “The injury [appellant] suffered working for the [employing establishment] most likely aggravated the service-connected lumbar condition.”

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Gopalswamy did not provide adequate medical rationale in support of her conclusion on

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁷ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *Elaine Pendleton*, *supra* note 5; 20 C.F.R. § 10.5(a)(14).

¹⁰ The report was also produced and signed by Ken Abney, an attending physician’s assistant.

causal relationship.¹¹ Dr. Gopalswamy did not adequately explain why she felt that appellant's condition upon examination in July 2008 was related to the March 20, 2006 incident that occurred more than two years prior. She did not describe the medical process of how the specific employment incident could have contributed to such a long-standing aggravation of the underlying back condition. Although Dr. Gopalswamy acknowledged that appellant sustained a service-related back injury in 1997 and had continuous back pain since that time up through the March 20, 2006 incident, she did not provide a detailed discussion of appellant's back condition prior to March 20, 2006. She did not explain how physical examination and diagnostic testing findings showed that appellant sustained an employment-related aggravation of his back condition. For example, Dr. Gopalswamy did not compare the findings of diagnostic testing from periods shortly before and after March 20, 2006 and describe how the findings showed an employment-related aggravation. Although appellant reported worsening symptoms after March 20, 2006, the Board has held that the fact that a condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between a claimed condition and employment factors.

On December 18, 2008 Dr. Martin Fritzhand, an attending Board-certified preventive medicine physician, stated that, upon examination, appellant had normal spine curvature, tenderness to palpation throughout the low back region, difficulty forward bending, decreased range of motion upon extension and flexion, diminished straight leg raise to 50 degrees bilaterally, diminished range of motion of the hips with knees flexed to 90 degrees bilaterally, and intact strength and sensory function. He stated that appellant had a well-documented underlying back condition characterized as degenerative joint disease of the lumbar spine and posited that his March 2006 accident aggravated this condition. Dr. Fritzhand stated, "His history is clear that low back pain had essentially ceased by 2003 only to recur directly following his March 2006 injury."

Dr. Fritzhand also failed to provide adequate medical rationale in support of his opinion that appellant sustained an aggravation of his preexisting back condition due to the March 20, 2006 employment incident. He did not describe the medical process of how the March 20, 2006 incident could have aggravated appellant's underlying back condition. Dr. Fritzhand noted that appellant sustained a service-related back injury about 10 years prior, but he did not provide any notable discussion of appellant's medical history, including examination and testing findings, prior to March 20, 2006. Moreover, his opinion on causal relationship is not based on an accurate factual and medical history. In reaching his conclusion, Dr. Fritzhand placed great emphasis on the fact that appellant did not complain of back pain between 2003 and the March 2006 incident. The Board notes that there are a number of medical reports of record, including the July 23, 2008 report of Dr. Gopalswamy, that show that appellant complained of significant back pain between 2003 and 2006.

¹¹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹³ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

For these reasons, appellant did not submit medical evidence showing that she sustained a medical condition on March 20, 2006 due to the accepted employment incident and the Office properly denied his claim.¹⁴

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 20, 2006.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ The Board notes that it is not necessary to review the medical evidence appellant submitted prior to the Office's April 9, 2007 decision as the Board has already found, in its April 16, 2008 decision, that this evidence did not establish his claim.