

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

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**L.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Trenton, NJ, Employer**

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**Docket No. 09-1206  
Issued: January 11, 2010**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 3, 2009 appellant filed a timely appeal from the April 14, 2008 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim and the October 1, 2008 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained a traumatic injury while in the performance of duty on July 17, 2007; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On July 17, 2007 appellant, then a 28-year-old city letter carrier, filed a traumatic injury claim alleging that he felt a twist in his back on that date while delivering, due to the weight and position of his satchel. He stopped work on July 18, 2007.<sup>1</sup>

Appellant submitted a July 17, 2007 report bearing an illegible signature from the employing establishment health unit. The nature of appellant's injury was described as "back injury." A July 17, 2007 employing establishment medical report, signed by a physician's assistant, reflects that appellant felt pain and a tightening of a muscle in his lower back while carrying a satchel at work on that date. The report provides a diagnosis of lumbosacral sprain/strain.

Appellant submitted illegible prescriptions dated July 18 and 19, 2007 from Dr. Nazar H. Haidri, a Board-certified neurologist. The record contains prescriptions dated July 17, 2007 for vicodin and anaprox signed by Dr. Shari E. Diamond, a Board-certified internist. In a July 17, 2007 disability slip, a physician's assistant from Dr. Diamond's practice diagnosed lumbosacral spine sprain/strain and noted that appellant could return to work on July 18, 2007, provided that he was prohibited from bending or from lifting more than 15 pounds.

In a letter dated August 13, 2007, the Office informed appellant that the information submitted was insufficient to establish that he actually experienced the incident alleged. It advised him to submit details surrounding the alleged incident, as well as a physician's report which provided examination findings, a diagnosis and a rationalized opinion explaining the cause of the diagnosed condition.

In an August 8, 2007 duty status report, Dr. Haidri stated that appellant complained of back sprain while walking his route on July 17, 2007. On July 19, 2007 he indicated that appellant had "reinjured" his back while lifting a bag of mail at work on the date in question. Dr. Haidri's examination revealed tenderness over the percussion dorsal and lumbar spine and a spasm in the lumbar paravertebral muscles. He recommended "no work" due to appellant's symptoms. In an August 9, 2007 attending physician's report, Dr. Haidri stated that appellant was injured on February 12, 2004 in a work-related motor vehicle accident, and then "reinjured on his back" in July 2007.

On August 9, 2007 Dr. Haidri provided the following diagnoses: thoracic spine spasm; lumbar sprain; radiculopathy, leg, lumbar, lumbosacral, thoracic, left; neuropathy, left upper extremity; left shoulder pain; cervical sprain; left shoulder contusion; peripheral neuropathy. He stated that appellant had experienced medium and low back pain with radiation to his left and right buttocks since July 17, 2007. Dr. Haidri reported spasm in the lumbar paravertebral muscles. In an August 23, 2007 follow-up report, he noted tenderness to percussion in the dorsal and lumbar spine and recommended that appellant continue his off-duty status.

On September 17, 2007 the employing establishment controverted appellant's claim.

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<sup>1</sup> Appellant's February 2, 2004 traumatic injury claim was accepted for lumbar sprain, radiculopathy and left shoulder contusion (File No. xxxxxxx144).

By decision dated September 19, 2007, the Office denied appellant's claim on the grounds that he had failed to establish the fact of injury.

On October 11, 2007 appellant requested an oral hearing. He submitted a September 10, 2007 follow-up report from Dr. Haidri reflecting that his condition was unchanged. In a July 17, 2007 report bearing an illegible signature, a physician's assistant provided a diagnosis of lumbosacral sprain. The report reflects that appellant felt a sudden onset of lower back pain while putting on his letter carrier's bag on July 17, 2007.

At the February 13, 2008 hearing, appellant testified that he twisted his back while lifting his mailbag from his truck and putting it on his back on July 17, 2007. He tried, but was unable, to finish his route, due to severe back pain. Noting his satisfaction with the factual aspect of the claim, the hearing representative advised appellant to submit additional medical evidence establishing that he sustained a diagnosed medical condition as a result of the July 17, 2007 incident.

In a decision dated April 14, 2008, the Office hearing representative found that appellant had established that the July 17, 2007 event had occurred as alleged, namely that he felt a twist in his back while placing his mail satchel on his back. However, he found that the medical evidence was insufficient to establish that appellant had sustained a diagnosed medical condition as a result of the accepted incident. The representative affirmed the September 19, 2007 decision as modified.

In an undated letter received on July 28, 2008, appellant requested reconsideration. He contended that the evidence of record was sufficient to establish his claim. Appellant submitted copies of signed reports from Dr. Haidri, which had been previously submitted unsigned, and a prescription for a magnetic resonance imaging (MRI) scan.

By decision dated October 1, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.<sup>2</sup>

#### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> The phrase sustained while in the performance of duty is regarded as the

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<sup>2</sup> Appellant submitted additional evidence after the Office's October 1, 2008 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

<sup>3</sup> 5 U.S.C. § 8102(a).

equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.<sup>4</sup>

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>6</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>7</sup> An award of compensation may not be based on appellant's belief of causal relationship.<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 a causal relationship.<sup>9</sup> Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.<sup>10</sup>

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported

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<sup>4</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>5</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>6</sup> *Paul Foster*, 56 ECAB 208 (2004). See also *Deborah L. Beatty*, 54 ECAB 340 (2003); *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury, as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). See 20 C.F.R. §§ 10.5(q) and (ee), which defines occupational disease and traumatic injury, respectively.

<sup>7</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.303(a).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>11</sup>

## **ANALYSIS**

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the July 17, 2007 twisting incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>12</sup> However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup>

The Office accepted that appellant twisted his back on July 17, 2007 as alleged, but found that there was no medical evidence establishing that the accepted incident caused or contributed to a diagnosed condition. The Board finds, however, that the medical evidence of record is sufficient to require further development.

Reports from Dr. Haidri, appellant's treating physician, support that he sustained a work-related back injury on July 17, 2007. On July 19, 2007 Dr. Haidri indicated that appellant had "reinjured" his back while lifting a bag of mail at work on the date in question. His examination revealed tenderness over the percussion dorsal and lumbar spine and a spasm in the lumbar paravertebral muscles. Dr. Haidri recommended "no work" due to appellant's symptoms. On August 8, 2007 he stated that appellant complained of back sprain while walking his route on July 17, 2007. On August 9, 2007 Dr. Haidri reported that appellant was injured on February 12, 2004 in a work-related motor vehicle accident, and then "reinjured on his back" in July 2007. He diagnosed: thoracic spine spasm; lumbar sprain; radiculopathy, leg, lumbar, lumbosacral, thoracic, left; neuropathy, left upper extremity; left shoulder pain; cervical sprain; left shoulder contusion; and peripheral neuropathy. Dr. Haidri stated that appellant had experienced medium and low back pain with radiation to his left and right buttocks since July 17, 2007 and reported spasm in the lumbar paravertebral muscles. In an August 23, 2007 follow-up report, he noted

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<sup>11</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> See *Virginia Richard*, claiming as executrix of the estate of *Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>13</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 12; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

tenderness to percussion in the dorsal and lumbar spine and recommended that appellant continue his off-duty status.

The record contains prescriptions dated July 17, 2007 for vicodin and anaprox signed by Dr. Diamond and a July 17, 2007 disability slip, signed by a physician's assistant from Dr. Diamond's practice diagnosing lumbosacral spine sprain/strain. While these notes do not constitute competent medical evidence, they corroborate appellant's claim that he had severe back pain on July 17, 2007.<sup>14</sup>

The Board notes that, while none of the medical reports of record are completely rationalized, they do provide support for, and are factually consistent with, appellant's claim that he sustained an employment-related back injury due to the July 17, 2007 twisting incident. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontested inference between appellant's claimed condition and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>15</sup> Therefore, the Board finds that the case must be remanded for further development of the medical evidence. On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident and shall issue an appropriate decision in order to protect his rights of appeal.

### **CONCLUSION**

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty on July 17, 2007.

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<sup>14</sup> Physicians' assistants do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

<sup>15</sup> See *Virginia Richard*, *supra* note 12; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Caralone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 14, 2008 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further development consistent with this decision.<sup>16</sup>

Issued: January 11, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> In light of the Board's ruling on the first issue, the second issue is moot.