

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

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L.D., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cincinnati, OH, Employer )

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**Docket No. 09-1918  
Issued: June 15, 2010**

*Appearances:*  
*Appellant, pro se*  
*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 July 21, 2009 appellant filed a timely appeal from a March 16, 2009 merit decision of the Office of Workers' Compensation Programs affirming a July 23, 2008 decision that denied his claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established that he sustained right calf, knee or back conditions causally related to his employment injury of April 23, 2008.

**FACTUAL HISTORY**

On April 24, 2008 appellant, a 33-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for an injury to his right leg and calf muscle that he sustained on April 23, 2008 when, while delivering a parcel, he slipped and fell. The Office accepted his claim for right leg strain.

Appellant submitted reports and notes signed by chiropractors, a physical therapist, and a registered nurse. The chiropractic treatment reports and notes diagnosed right leg strain, sciatica, compression deformities, lumbosacral sprain and strain and radiculopathy at the L5-S1 level.

Appellant submitted an April 26, 2008 report in which Dr. Joseph Mooney, Board-certified in emergency medicine, reported findings on examination and diagnosed right sciatica.

Appellant submitted an April 28, 2008 report, signed by Cindy J. Jones, a licensed practical nurse, reporting findings on examination and diagnosing back pain with radiculopathy. The portion of the report diagnosing back pain was also signed by Dr. Chad H. Dunkle, Board-certified in family medicine.

Appellant submitted a May 2, 2008 report in which Dr. W. Douglas Ross, orthopedist, reviewed appellant's history of injury, presented findings on examination and diagnosed knee sprain. Regarding the history of injury, Dr. Ross noted that appellant had fallen on a step with his right leg and foot stretched out before him. He stated that appellant complained of right calf pain, but denied any associated knee pain or back pain.

In a May 2, 2008 report, Dr. William R. Drew, a Board-certified diagnostic radiologist, reported that magnetic resonance imaging (MRI) scans of appellant's spine revealed a moderate-sized extruded disc herniation at the L5-S1 level. He also reported that an MRI scan of appellant's lower leg was normal.

By letter dated June 2, 2008, the Office notified appellant that the evidence of record did not support his claim for back pain, knee sprain, disc herniation or sciatica. It requested he submit additional evidence supporting his claim and advised him of the type of evidence required.

By report dated June 6, 2008, Dr. Ross reviewed appellant's history of injury, reported findings on examination and diagnosed herniated lumbar disc and lumbar radiculopathy.

In a June 20, 2008 report, Dr. Ross reviewed appellant's history of injury, presented findings on examination and diagnosed "[s]prain 844.9," herniated disc and sciatica. He opined that appellant's condition was "caused by his work injury or certainly aggravated by [*sic*] work injury that is causing sciatica and lower leg pain."

On July 8, 2008 Dr. Ross related treating appellant for knee, leg and back pain that he attributed to a "workplace injury [*sic*]" occurring April 23, 2008. He diagnosed appellant with sciatica and "radicular symptoms to right [*sic*] buttocks, posterior thigh, lateral lower leg" as well as extruded disc herniation.

By decision dated July 23, 2008, the Office denied the claim, finding the evidence of record did not establish these additional conditions were caused by the identified employment incident.

Appellant submitted a July 25, 2008 report in which Dr. Ross reviewed appellant's history of injury, presented findings on examination and diagnosed knee strain.

On August 12, 2008 appellant requested an oral hearing.

Appellant submitted a November 29, 2008 report in which Dr. Mooney reviewed appellant's past medical history, presented findings on examination and diagnosed left lumbosacral strain with radiculopathy. Dr. Mooney noted that appellant complained of back pain that radiated into his left hip. He notes in his history, that appellant was involved in a motor vehicle accident while driving a postal vehicle.

In a December 2, 2008 report (Form CA-17), Dr. Charles H. Pierce, a family physician, reported findings on examination and diagnosed lumbosacral sprain. By check mark, he opined that appellant's condition was work related. Dr. Pierce attributed appellant's injury to a "vehicle accident" that occurred on November 29, 2008.

A hearing was conducted on December 10, 2008 during which appellant described the events of April 23, 2008, his condition and course of treatment. The hearing officer advised appellant that he needed to submit medical evidence demonstrating that the conditions diagnosed in the record were caused by the identified employment incident.

By report dated December 12, 2008, Dr. Ross reviewed appellant's history of injury, presented findings on examination and diagnosed knee strain. He noted:

"[This condition was] most likely causally related to the injury of April 23, 2008, that this injury was caused by a force, dorsiflexing the foot and ankle causing compression of the lower extremity by compressing the pelvis and lumbar spine on the right. [Appellant] had no previous injury or work restrictions or any previous absenteeism from the job or injuries at work. Because the right calf pain and sciatic-like pain in the right leg, again this is most likely radiculopathy and I do believe that it is causally related to his injury."

By decision dated March 16, 2009, the Office affirmed its June 23, 2008 decision, finding that the evidence of record did not demonstrate the additional conditions appellant alleged were caused by the identified employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>2</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>3</sup> As part of his burden, the employee must submit rationalized medical opinion evidence

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

based on a complete factual and medical background showing causal relationship.<sup>4</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

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.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</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 which includes a physician's rationalized opinion on 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 employee.<sup>8</sup>

### ANALYSIS

The Office accepted appellant's claim for right leg strain. Appellant alleges he also sustained right calf injury, knee sprain, low back disc herniation and sciatica because of the April 23, 2008 employment incident. Appellant's burden is to establish the identified employment incident caused these additional conditions. Causal relationship is a medical issue that can only be proven by rationalized medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence and, consequently, the Board finds appellant has not

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<sup>4</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>7</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>8</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

established he sustained any condition other than his accepted right leg strain in the performance of duty on April 23, 2008 causally related to his employment.<sup>9</sup>

Regarding appellant's alleged right calf condition, the Board finds that appellant has not submitted any rationalized medical evidence from any physician, which provides a diagnosis of appellant's right calf condition and then causally relates that diagnosis to the slip and fall of April 23, 2008. At best, some of the medical reports of record note that appellant has right calf pain, but pain is a symptom and not a medical diagnosis.<sup>10</sup>

Regarding appellant's low back condition, he has submitted reports and notes signed by chiropractors, physical therapists and a registered nurse. Because healthcare providers such as nurses, acupuncturists, physicians assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.<sup>11</sup> Therefore, the reports signed by the physical therapists and registered nurse do not constitute competent medical evidence and are insufficient to satisfy appellant's burden.

Moreover, the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>12</sup> A chiropractor is not considered a "physician" under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>13</sup> As none of the chiropractic treatment reports and notes diagnose subluxation as demonstrated by x-rays to exist, these chiropractors do not constitute "physicians" for purposes of the Act, their reports and notes do not qualify as competent medical evidence and, accordingly, are insufficient to satisfy appellant's burden.

The medical evidence of record regarding appellant's back condition consists of reports signed by Drs. Drew, Dunkle, Mooney, Pierce and Ross. This evidence has limited probative value on the issue of causal relationship because it lacks a rationalized opinion explaining how the identified employment incident caused the conditions diagnosed.<sup>14</sup> Both Drs. Pierce and Ross opined that appellant's condition is employment related. Dr. Pierce did not describe the

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<sup>9</sup> Appellant submitted a medical report, dated December 2, 2008, bearing an illegible signature and an unsigned diagnostic test report, dated April 26, 2008. 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. See *Willie M. Miller*, 53 ECAB 697 (2002). Accordingly, these reports have no evidentiary value.

<sup>10</sup> *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>11</sup> 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>12</sup> The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); see also *Jack B. Wood*, 40 ECAB 95 (1988).

<sup>13</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>14</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009).

mechanism of injury and, furthermore, his opinion on causal relationship consists of a check mark on a form report, offering no medical explanation of his opinion.<sup>15</sup> Furthermore, he attributed appellant's condition to a November 29, 2008 motor vehicle accident, not the identified April 23, 2008 employment incident. While Dr. Ross also opined in multiple reports that appellant's leg and "sciatic-like pain" were causally related to the April 23, 2008 employment incident, he provides no explanation, supported by medical rationale, substantiating such a conclusion. He noted in his initial report dated May 2, 2008 that appellant had no back complaints and thereafter never offered a rationalized medical opinion as to how appellant's current back diagnoses could have been caused by the April 23, 2008 injury, if appellant had no back pain up until May 2, 2008.

Dr. Ross opined that appellant's knee strain was "most likely causally related to the injury of April 23, 2008." The Board finds that this is insufficient to establish appellant's claim as Dr. Ross' opinion is couched in speculative terms<sup>16</sup> regarding how appellant's knee strain occurred. These deficiencies reduce the probative value of these physician's opinions such that their reports and notes lack probative value on the issue of causation and are insufficient to satisfy appellant's burden of proof.

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>17</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>18</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>19</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

### **CONCLUSION**

The Board finds appellant has not established that he sustained right calf, knee or back conditions on April 23, 2008 in the performance of duty causally related to his employment.

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<sup>15</sup> See *Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

<sup>16</sup> See *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

<sup>17</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>18</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>19</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 16, 2009 and July 23, 2008 decisions of the Office of Workers' Compensations Programs are affirmed.

Issued: June 15, 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