

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

S.B., Appellant)	
)	
and)	Docket No. 09-2356
)	Issued: June 18, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2009 appellant filed a timely appeal from May 5 and August 24, 2009 merit decisions of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

On appeal, appellant contends that his injury is employment related and was caused by on-the-job lifting.

FACTUAL HISTORY

On February 23, 2009 appellant, then a 39-year-old postal worker, filed an occupational disease claim (Form CA-2) alleging that he sustained a hernia due to daily lifting of heavy parcels and bundles of magazines at work. He also stated that he lifted several parcels weighing

approximately 50 pounds. Although appellant felt some strain, he did not realize he hurt himself until February 8, 2009.

By letter dated March 11, 2009, the Office notified appellant of the deficiencies in his claim and requested that he submit medical evidence.

On February 10, 2009 Dr. William F. DiGilio, a Board-certified surgeon, stated that appellant presented with a bulge in the right groin area. Examination showed a slight bulge in the suprapubic area by palpation. Dr. DiGilio diagnosed a primary right inguinal hernia. He discussed surgical options and scheduled appellant for an open repair on February 25, 2009. In an attending physician's report dated March 16, 2009, Dr. DiGilio provided a diagnosis of right inguinal hernia. Where asked whether the condition was caused or aggravated by an employment activity, he stated that he was unsure and that appellant was seen at another office prior to the referral.

By decision dated May 5, 2009, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he experienced an injury causally related to the factors of his federal employment.

On May 27, 2009 appellant filed a request for a review of the written record by an Office hearing representative. In a May 18, 2009 letter, he stated that the daily lifting of heavy parcels caused his injury. Appellant further stated that on February 8, 2009 he lifted a black military tote weighing approximately 60 pounds and felt a strain in his groin. That evening, he noticed a bulge in his right groin area and was subsequently advised by his physician that he had a hernia. Appellant submitted a document stating that most hernias develop at weak spots in the abdominal wall and may be caused by heavy lifting. He also provided an operative report for a February 25, 2009 inguinal hernia repair.

By decision dated August 24, 2009, an Office hearing representative affirmed the May 5, 2009 decision finding that appellant did not submit sufficient medical evidence to show that his hernia was causally related to the factors of his employment.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he is an "employee" within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *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).

⁴ *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.

also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty in a claim for 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 causally related to the employment factors identified by the employee.⁶

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.⁷

ANALYSIS

The issue is whether appellant established that he sustained a hernia causally related to his employment duties, including heavy lifting. The Board finds he has not provided sufficient medical evidence to support his claim and thus failed to meet his burden of proof.

Appellant submitted a February 25, 2009 operative report for an inguinal hernia repair. This report does not address the cause of the hernia and is therefore of diminished probative value.⁸ Appellant also provided a document stating that most hernias develop at weak spots in the abdominal wall and may be caused by heavy lifting. The Board has held that textual evidence has little probative value in resolving questions unless a physician shows the applicability of the general medical principles discussed in the text to the specific factual situation at issue in the case.⁹ Therefore, this document is also of diminished probative value as it is not accompanied by a physician's report addressing appellant's medical situation and work factors.¹⁰

On February 10, 2009 Dr. DiGilio diagnosed a primary right inguinal hernia and scheduled surgery. In a March 16, 2009 report, he stated that he was unsure whether this

⁵ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁷ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *See Robert Broome*, 55 ECAB 339 (2004); *Conard Hightower*, 54 ECAB 796 (2003).

⁹ *Ruby I. Fish*, 46 ECAB 276 (1994). *See Edna C. Drinkwine*, 10 ECAB 511, 514 (1959).

¹⁰ *See Gloria J. McPherson*, 51 ECAB 441 (2000).

condition was caused or aggravated by employment factors as appellant was initially seen at another office. This evidence is not sufficient to establish appellant's claim as Dr. DiGilio did not provide an opinion, based on reasonable medical certainty, that the hernia was causally related to appellant's employment.¹¹ Rather, Dr. DiGilio stated that he was unsure whether the condition was employment related and noted that appellant was initially seen at another office prior to his surgical referral. Appellant did not submit medical reports relating to his initial medical appointment or any other evidence providing a rationalized opinion that he sustained the hernia due to his employment factors.¹² Therefore, the Board finds that he has not met his burden of proof in establishing his claim.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury causally related to the factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 24 and May 5, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² See *Victor J. Woodhams*, *supra* note 7.