

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

R.I., Appellant

and

**U.S. POSTAL SERVICE, SAND ISLAND
STATION, Honolulu, HI, Employer**

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**Docket No. 09-2099
Issued: May 4, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2009 appellant filed a timely appeal of a May 22, 2009 merit decision of the Office of Workers' Compensation Programs finding that he 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 established that he sustained a back injury while in the performance of duty.

FACTUAL HISTORY

On December 4, 2008 appellant, then a 58-year-old city mail letter carrier, filed an occupational disease claim alleging that in March 2008 he first became aware of a pinched nerve. On April 8, 2008 he first realized that this condition was caused by his repetitive work duties. Appellant listed standing, turning, twisting, bending, casing and pulling down letters and flats, pushing and pulling dollies, metal cages, hampers and equipment, loading trays of letters and

tubs of flats and parcels into a postal vehicle, reaching, fingering, straddling and unstrapping seat belts in the vehicle, opening and closing the driver's side door of the vehicle at every stop to deliver the mail, opening and closing rear sliding truck door to retrieve mail, opening, reaching and closing mailboxes, servicing the vehicle, carrying a satchel while delivering mail on foot and stepping in and out of the vehicle to make deliveries.

By letter dated December 16, 2008, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence.

In medical records dated December 26, 2008, Dr. Joseph R. DiCostanzo, Jr., an attending physiatrist, advised that appellant sustained lumbar radiculopathy, degeneration of the lumbar intervertebral disc, sciatica, lumbago, back pain and industrial trauma. He opined that appellant could return to full-duty work with no restrictions.

By decision dated January 21, 2009, the Office denied appellant's claim. It found that he experienced the claimed employment factors at the time, place and in the manner alleged but that the medical evidence was insufficient to establish injury.

In a February 18, 2009 letter, appellant requested reconsideration. In progress notes dated April 8, 2008 to February 9, 2009, Dr. Coswin K. Saito, a Board-certified physiatrist, advised that appellant sustained osteoarthritis, spinal stenosis, radiculopathy, sciatica, neurogenic claudication and low back pain with degenerative joint disease of the lumbar spine. On February 12, 2009 he reviewed a May 2008 magnetic resonance imaging (MRI) scan of the lumbar spine which showed multilevel degenerative disc disease with some left lateral stenosis at L5 and foraminal stenosis at L5-S1. Regarding causation, Dr. Saito stated that there was no specific injury of note. Appellant's pain likely evolved over a period of many years due to his repetitive activities as a carrier. Dr. Saito stated that bending, lifting and driving a truck may have contributed to his symptoms. Swimming and walking did not appear to be major contributors to appellant's back pain.

In a February 9, 2009 report, Dr. DiCostanzo reiterated his prior diagnoses and advised that appellant could return to full-duty work with no restrictions. In a February 9, 2009 progress note, he advised that appellant sustained osteoarthritis of the lumbar spine.

In notes dated September 22 to December 3, 2008, Dr. Gary Saito, a chiropractor, advised that appellant sustained lumbar and pelvic subluxations. He had pain in the lumbar, pelvic coccyx, sacral and sacrum regions. In a February 11, 2009 report, Dr. Saito diagnosed spinal sprain/strain and mild-to-moderate spinal stenosis at multiple levels as a result of his employment duties. He had a significant injury and flare-up in March/April 2008 that required multidisciplinary care. Dr. Saito stated that appellant had been queried many times about his personal and leisure activities and there was nothing that could have reasonably contributed to the severity of his condition. Appellant's daily work duties during 25 years at the employing establishment involved lifting and carrying items of varying weights and shapes. He experienced an increased workload during the holidays as he was required to deliver promotional materials.

An April 16, 2009 report signed on behalf of Dr. DiCostanzo stated that appellant sustained an injury caused by an employment activity.

In a May 22, 2009 decision, the Office denied modification of the January 21, 2009 decision. It found that appellant failed to submit sufficient medical evidence to establish that he sustained a back condition causally related to the accepted work-related duties.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁵ Neither the fact that appellant's condition became apparent during a

¹ Following the issuance of the Office's May 22, 2009 decision, the Office received additional evidence. Appellant also submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

period of employment nor is his belief that the condition was caused by his employment sufficient to establish a causal relationship.⁶

ANALYSIS

The Office accepted that appellant performed the work duties of a city mail letter carrier involving repetitive activities, such as pushing, pulling, standing, twisting and turning. The Board finds, however, that the medical evidence is insufficient to establish that his diagnosed back condition was caused or aggravated by his work-related duties.

Dr. DiCostanzo's medical records advised that appellant sustained lumbar radiculopathy, degeneration of the lumbar intervertebral disc, sciatica, lumbago, back pain, industrial trauma and osteoarthritis of the lumbar spine. He noted that appellant could return to full-duty work with no restrictions. Dr. DiCostanzo did not address, however, whether the diagnosed conditions were caused or aggravated by the established work-related duties. He did not provide any explanation to support that appellant's accepted work duties had caused or contributed to any of the diagnosed conditions. The Board finds that his medical records are insufficient to establish appellant's claim.

Dr. Coswin Saito's medical records stated that appellant sustained osteoarthritis, spinal stenosis, radiculopathy, sciatica, neurogenic claudication, degenerative joint disease with some left lateral stenosis at L5 and foraminal stenosis at L5-S1 of the lumbar spine. On February 12, 2009 he noted that there was no specific injury regarding the cause of appellant's multilevel degenerative disc disease. Dr. Saito opined that appellant's pain "likely" evolved over a period of many years due to his repetitive activities as a carrier. He stated that bending, lifting and driving a truck "may" have contributed to his symptoms. The Board notes that Dr. Saito did not provide a rationalized opinion on causal relation. Dr. Saito's use of the words "likely" and "may" are equivocal and speculative in addressing the relationship of appellant's physical findings to his employment. This evidence is insufficient to meet appellant's burden of proof.⁷

Dr. Gary Saito stated that appellant had lumbar and pelvic stenosis with subluxation. He did not indicate that the diagnosis was based on x-rays. In the absence of a diagnosis of subluxation based on x-rays, he is not a "physician" as defined under the Act.⁸ Therefore, Dr. Saito's progress notes are of no probative medical value in establishing appellant's claim.

The January 6, 2009 report from Blaine Yoshioka, a physical therapist, is of no probative value in establishing appellant's claim. A physical therapist is not a "physician" as defined under the Act.⁹

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *See* 5 U.S.C. § 8101(2); *Michelle Salazar*, 54 ECAB 523 (2003).

⁹ *See* 5 U.S.C. § 8101(2); A.C., 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).

The April 16, 2009 report signed by someone with an illegible signature on behalf of Dr. DiCostanzo stated that appellant sustained an injury caused by an employment activity. As this evidence lacks adequate documentation that it was completed by a physician it does not constitute probative medical evidence.¹⁰

The Board finds that there is insufficient medical evidence of record to establish that appellant sustained a back condition causally related to factors of his federal employment as a city mail letter carrier. Appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2010
Washington, DC

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

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

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

¹⁰ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).