

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

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<b>L.P., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 10-319</b>
	)	<b>Issued: October 12, 2010</b>
<b>U.S. POSTAL SERVICE, RENO PROCESSING &amp; DISTRIBUTION CENTER, Reno, NV, Employer</b>	)	
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*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 November 18, 2009 appellant filed a timely appeal of the June 26 and October 22, 2009 merit decisions of the Office of Workers' Compensation Programs finding that she 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 sustained a back injury while in the performance of duty, causally related to factors of her federal employment.

**FACTUAL HISTORY**

On November 9, 2008 appellant, then a 52-year-old postal clerk, filed an occupational disease claim alleging that on November 3, 2008 she first became aware of her lower back pain and realized that it was caused by bending, lifting and twisting at the employing establishment.

In a November 7, 2008 medical report, Dr. Martin J. Arraiz, an attending Board-certified physiatrist, advised that appellant was on restrictive duty effective that date. He listed her physical limitations.

By letter dated November 20, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical report from an attending physician which described her symptoms, examination and test results, diagnosis, treatment provided, effect of treatment and opinion with medical reasons on how the diagnosed condition was caused or contributed to by the claimed injury.

In a December 3, 2008 letter, appellant described her activities outside work and medical history and treatment regarding a prior knee injury and claimed back injury. She reiterated that her work duties involved bending, lifting and twisting.

By decision dated December 29, 2008, the Office denied appellant's claim, finding the evidence insufficient to establish that she sustained a back condition causally related to factors of her federal employment.

On January 8, 2009 appellant requested a review of the written record by an Office hearing representative regarding the Office's December 29, 2008 decision. She submitted Dr. Arraiz's November 7 and December 17, 2008 reports which listed his findings on physical examination and diagnosis of lumbar degenerative disc disease and radiculitis. In a January 19, 2009 report, Dr. John J. Halki, a Board-certified orthopedic surgeon, reviewed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine which demonstrated evidence of mild multilevel degenerative disc disease and facet degeneration. He advised that her work duties which appeared to involve repetitive lifting and twisting could exacerbate her degenerative changes and cause increased back pain. Dr. Halki recommended that she remain on light duty with restrictions.

By decision dated March 17, 2009, an Office hearing representative affirmed the December 29, 2008 decision, finding the factual and medical evidence insufficient to establish that appellant's claimed back injury was causally related to her claimed work duties.

By letter dated March 29, 2009, appellant requested reconsideration of the hearing representative's March 17, 2009 decision. A June 18, 2009 report from Dr. Michael Panicari, a general practitioner, advised that she suffered from chronic low back pain.

In a June 26, 2009 decision, the Office modified the hearing representative's March 17, 2009 decision to reflect that appellant had submitted sufficient factual evidence pertaining to her work duties to establish fact of injury. It, however, found that the medical evidence was insufficient to establish that she sustained a back injury causally related to the established work-related duties.

On July 16, 2009 appellant requested reconsideration of the Office's March 17, 2009 decision. She submitted Dr. Panicari's June 18, 2009 treatment notes which described her work duties and provided a history of her prior back problems and medical treatment. Dr. Panicari listed his findings on physical examination and reviewed appellant's medical records. He found no documented work-related injury sustained by her on or about November 3, 2008. Dr. Panicari opined that appellant's complaints of back pain were due to a preexisting back condition. He advised that the physical restrictions set forth by an attending physician were not related to her current back injury.

In a November 17, 2008 report, Dr. Eric M. Boyden, a Board-certified orthopedic surgeon, listed his findings on physical and x-ray examination. He advised that appellant was status post total right knee replacement with persistent significant pain that radiated up and down her leg. Dr. Boyden believed her knee pain emanated from her back. In a January 14, 2009 report, Dr. Halki noted appellant's complaint of pain in her right knee, lower leg and ankle and back commencing November 6, 2008 while working at the employing establishment. He also noted her treatment and diagnostic test results. Dr. Halki stated that appellant believed her back pain was exacerbated by her work activities which involved bending, lifting and twisting.

By decision dated October 22, 2009, the Office denied modification of the June 26, 2009 decision, finding that the medical evidence was insufficient to establish that appellant sustained a back injury causally related to the established work-related duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of 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 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.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.<sup>4</sup> Neither the fact that appellant's condition became apparent during a period of employment nor is her belief that the condition was caused by her employment sufficient to establish a causal relationship.<sup>5</sup>

### ANALYSIS

The Office accepted that appellant performed the work duties of a postal clerk as alleged. The Board finds that the medical evidence submitted is insufficient to establish that her diagnosed back conditions were caused or aggravated by her work-related duties.

Appellant submitted medical records from Dr. Arraiz, an attending Board-certified physiatrist. In a November 7, 2008 report, Dr. Arraiz advised that appellant was on restrictive duty effective that date and listed her physical limitations. He did not provide a firm medical diagnosis or address a causal relationship between the established work-related duties and appellant's claimed back condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>6</sup> The Board finds that Dr. Arraiz's report is insufficient to establish appellant's claim. In reports dated November 7 and December 17, 2008, Dr. Arraiz listed his findings on physical examination and diagnosed lumbar degenerative disc disease and radiculitis. Again, he failed to provide any opinion addressing the causal relationship between appellant's lumbar conditions and the established work-related duties.<sup>7</sup> The Board finds that Dr. Arraiz's reports are insufficient to establish her claim.

In a January 19, 2009 report, Dr. Halki reviewed an MRI scan of appellant's lumbar spine and stated that it demonstrated evidence of mild multilevel degenerative disc disease and facet degeneration. He advised that she remain on light-duty work as her work duties, which involved repetitive lifting and twisting, could exacerbate her degenerative changes and cause increased back pain. Dr. Halki did not explain how the diagnosed lumbar conditions were causally related to the established work-related duties and furthermore, his opinion, through the use of the word could is equivocal and is insufficient to meet her burden of proof.<sup>8</sup> Additionally,

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>6</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

fear of future injury is not compensable under the Act.<sup>9</sup> The Board finds that Dr. Halki's report is insufficient to establish appellant's claim. In a January 14, 2009 report, Dr. Halki noted appellant's complaint of pain in her right knee, lower leg and ankle and back commencing November 6, 2008 while working at the employing establishment. He also noted her treatment and diagnostic test results. Appellant related to Dr. Halki that her back pain was exacerbated by her work activities which involved bending, lifting and twisting. Causal relationship is a medical issue and must be established by a well-reasoned medical opinion. Because lay opinions carry no weight, appellant's own opinion regarding the cause of her back pain is of no probative medical value.<sup>10</sup> Dr. Halki failed to provide his own opinion addressing the causal relationship between her back pain and the established work duties.<sup>11</sup> The Board finds that his report is insufficient to establish appellant's claim.

Dr. Panicari's June 18, 2009 report found that appellant suffered from chronic low back pain. He failed to provide any opinion addressing the causal relationship between appellant's lumbar condition and the established work duties.<sup>12</sup> Further, pain is a symptom and not a medical diagnosis.<sup>13</sup> The Board finds that Dr. Panicari's report is insufficient to establish appellant's claim. Dr. Panicari's June 18, 2009 treatment notes described her work duties and provided a history of her prior back problems and medical treatment. He listed his findings on physical examination. Dr. Panicari reviewed appellant's medical records and found no documented work-related injury sustained by her on or about November 3, 2008. He opined that her complaints of back pain were due to a preexisting back condition and that the physical restrictions set forth by an attending physician were not related to her current back injury. Dr. Panicari did not specifically attribute appellant's back pain to the established work-related duties of a postal clerk. Rather, he related it to her preexisting back condition. Further, as stated, pain is a symptom and not a medical diagnosis.<sup>14</sup> The Board finds that Dr. Panicari's report is insufficient to establish appellant's claim.

Dr. Boyden's November 17, 2008 report listed his findings on physical and x-ray examination. He opined that appellant was status post total right knee replacement with persistent significant pain that radiated up and down her leg. Dr. Boyden believed her knee pain emanated from her back. He did not specifically address whether appellant sustained a back condition causally related to the established work-related duties. The Board finds that Dr. Boyden's report is insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained a back condition causally related to the accepted factors of her federal employment as a postal clerk. Appellant did not meet her burden of proof.

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<sup>9</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008).

<sup>10</sup> *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988).

<sup>11</sup> See cases cited *supra* note 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>14</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a back injury while in the performance of duty, causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22 and June 26, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 12, 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