

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

_____)	
T.W., Appellant)	
)	
and)	Docket No. 11-867
)	Issued: December 2, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Washington, DC, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 23, 2011 appellant filed a timely appeal from a November 19, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 met his burden of proof to establish that he sustained a lower back injury in the performance of duty on August 25, 2010.

FACTUAL HISTORY

On August 26, 2010 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2010 he sustained a lower back injury when he was lifting a tray out of the mail tub. He notified his supervisor, stopped work and sought

¹ 5 U.S.C. § 8101 *et seq.*

medical treatment on August 26, 2010. The employing establishment controverted the claim stating that appellant failed to notify it on the same date as the accident.

In an August 26, 2010 general discharge instructions report, Dr. Gene Gincherman, Board-certified in emergency medicine, diagnosed appellant with muscle strain or ligament sprain around the spine. It was noted that a sprain could occur after a simple awkward movement or after lifting something heavy with poor body positioning. In a work release form of that same date, Dr. Gincherman reported that appellant could return to work on September 3, 2010 with no heavy lifting over five pounds.

In an August 26, 2010 duty status report (Form CA-17), Catherine Goodyear, a physician's assistant (PA), reported that appellant suffered a lumbar strain on August 25, 2010 when he was lifting trays out of a tub.

By letter dated August 27, 2010, the employing establishment controverted the claim stating that appellant did not immediately report his injury to his supervisor and that he did not feel pain until the morning after the incident.

By letter dated September 17, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In an August 26, 2010 emergency room report, Ms. Goodyear reported that appellant felt a sudden pull and pain on his right lower back while he was lifting mail from a bin at work. She diagnosed acute lumbar strain. Dr. John Lilly, Board-certified in family medicine, reported that appellant was lifting trays out of a tub and hurt his back on August 25, 2010. He diagnosed back muscle spasm.

In a September 7, 2010 medical note, Dr. Lilly reported that appellant was unable to work from September 3 to 20, 2010.

By decision dated November 19, 2010, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that the injury was related to the established August 25, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

The term physician is defined under section 8101(2), as follows: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."⁷ Physician's assistants are not physicians under FECA, therefore, their reports do not constitute competent medical evidence in support of a claim.⁸

ANALYSIS

OWCP accepted that the August 25, 2010 incident occurred as alleged. The issue is whether appellant established that the incident caused a back injury. The Board finds that he did

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ 5 U.S.C. § 8101(2).

⁸ *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

not submit sufficient medical evidence to support that his back injury is causally related to the August 25, 2010 employment incident.⁹

Appellant submitted an August 26, 2010 duty status report and emergency room report from Ms. Goodyear who diagnosed acute lumbar strain. Registered nurses, licensed practical nurses and physician's assistants, are not physicians as defined under FECA, and as such their opinions are of no probative value.¹⁰

In an August 26, 2010 emergency room report, Dr. Lilly offered a conclusion that appellant was lifting trays out of a tub and hurt his back the previous day. He diagnosed back muscle spasm and noted that appellant was unable to work until September 20, 2010. The Board finds that the opinion of Dr. Lilly is not well rationalized. Dr. Lilly's history of the August 25, 2010 employment incident repeated without detail appellant's factual assertions. He failed to address appellant's prior medical history and did not explain whether or how the accepted August 25, 2010 incident caused or contributed to any back injury. The Board has held that medical evidence that does not offer a rationalized opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Thus, Dr. Lilly's report is insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Gincherman's August 26, 2010 discharge report provided a general statement of disability for muscle strains and ligament sprains around the spine. While the report generally noted that a sprain could occur after lifting something heavy with poor body positioning, it did not specifically address the cause of appellant's back sprain. Further, the September 7, 2010 duty status report also fails to provide a specific detailed explanation on the cause of appellant's injury. While both reports provide a diagnosis, the physicians did not explain why appellant's condition was causally connected to the August 25, 2010 employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Without medical reasoning supported by facts, these reports are insufficient to meet appellant's burden of proof.¹³

On appeal, appellant contends that he has established that his injury is causally related to the August 25, 2010 employment incident. Appellant's honest belief that work caused his medical problem is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing that the diagnosed medical condition is causally related to the accepted August 25, 2010 employment incident.

⁹ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *Supra* at note 7.

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *Id.*

¹³ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a lower back injury on August 25, 2010 in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 19, 2010 is affirmed.

Issued: December 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board