United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 11-1170**
	)	**Issued: December 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Juana Diaz, PR, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 14, 2011 appellant filed a timely appeal from a March 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 27, 2011.

FACTUAL HISTORY

On January 27, 2011 appellant, then a 41-year-old sales and service clerk, filed a traumatic injury claim alleging that he was unloading mail trays from a general purpose container on that day when he experienced pain and discomfort in his left waist and groin. He

[1] 5 U.S.C. § 8101 *et seq.*

provided a January 27, 2011 hospital record from Dr. Javier Echevarria, a general practitioner, releasing him to duty effective February 3, 2011.

OWCP informed appellant in a February 8, 2011 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report from a physician explaining how the January 27, 2011 employment incident caused or contributed to his injury.[2]

In a January 27, 2011 report, Dr. Echevarria noted his findings in Spanish and English on medical forms that were printed in Spanish.[3] In a subsequent February 2, 2011 duty status report, he related appellant's account that lifting letter trays caused a lower back injury. Dr. Echevarria diagnosed back pain and recommended a July 2, 2011 return-to-work date.

A January 27, 2011 lumbar x-ray obtained by Dr. Juan M. Ramos, a Board-certified diagnostic radiologist, exhibited degenerative changes without acute abnormality.[4]

Appellant's postmaster pointed out in a January 29, 2011 statement that he underwent two surgeries in 2010.

By decision dated March 15, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted January 27, 2011 employment incident caused or contributed to a diagnosed condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[5] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[6] The employee must 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

[2] OWCP pointed out that appellant's claim was originally received as a simple, uncontroverted case resulting in minimal or no time loss from work and payment was approved for limited medical expenses without formal adjudication.

[3] Most of the report's English portion was illegible.

[4] Appellant also submitted chemistry and hematology evaluations and electrocardiogram results dated January 27, 2011.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[6] *R.C.*, 59 ECAB 427 (2008).

[7] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time and place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[9]

ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP accepted that appellant unloaded mail trays from a general purpose container on January 27, 2011, but denied his claim on the basis that the medical evidence did not sufficiently establish that this employment incident was causally related to a lower back, waist or groin injury. The case record, however, does not contain a translation of the Spanish portions of Dr. Echevarria's January 27, 2011 report. The Board has held that it is unreasonable for OWCP to deny a claim before it attempts to secure an accurate translation of the relevant evidence.[10] For OWCP and the Board to properly consider all evidence of record and accurate translation of the Spanish portion of Dr. Echevarria's report is needed. Therefore, the case will be remanded for this purpose and, after conducting such further development as it may find necessary, OWCP shall issue an appropriate merit decision.[11]

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

[8] *T.H.*, 59 ECAB 388 (2008).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See also Armando Colon*, 41 ECAB 563 (1990) (OWCP abused its discretion in denying an employee's request for reconsideration on the grounds that the evidence submitted lacked probative value because it was in a foreign language); *Patrick T. Wall*, Docket No. 01-1802 (issued March 26, 2002).

[11] *M.T.*, Docket No. 09-208 (issued November 9, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 14, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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