



In a March 9, 2009 report, Dr. Mark J. Geppert, a Board-certified orthopedic surgeon, treated appellant for left knee pain and right ankle pain. He noted that appellant was status post intramedullary (IM) rodding with removal of the rod and status post arthroscopy. Dr. Geppert diagnosed status post ankle sprain and tibia/fibula fracture. Appellant reported working 40 hours a week and having ankle discomfort when he worked overtime. Dr. Geppert restricted appellant to work 40 hours a week. In a March 11, 2009 duty status report, Dr. Geoffrey Stein, Board-certified in emergency medicine, noted findings of tenderness in the mid section of appellant's back and recommended that he return to work with restrictions. In a March 11, 2009 New Hampshire workers' compensation form, he diagnosed low back and right hip strain. Appellant reported injuring his right buttock and hip at work on March 5, 2009 when he was retrieving mail from mailboxes. Dr. Stein noted with a checkmark "yes" that appellant's injury and disability were a result of the described injury. Appellant returned to work on March 12, 2009 with restrictions.

In a letter dated March 23, 2009, the Office advised appellant of the type of factual evidence needed to establish his claim. It requested that he submit such evidence within 30 days.

In an undated statement, appellant noted that his duties included emptying a number of mailboxes at the end of the day. On March 5, 2009 snow was piled on the sidewalks and mailboxes were difficult to access. Appellant felt a twinge in his right hip and buttock while emptying mailboxes. He did not immediately report his injury because it did not seem bad and he thought it would heal without treatment. After four days appellant reported the injury and sought treatment.

In a March 9, 2009 workers' compensation form, Dr. Geppert diagnosed ankle pain, status post left fibula fracture and noted that appellant could continue to work up to 40 hours a week, with no overtime. He checked a box "yes" that appellant's injury and disability were the result of the injury described. In a March 11, 2009 report, Dr. Stein diagnosed strain of the low back and right hip. Appellant reported that, while he was collecting mail from mailboxes on March 5, 2009, he bent over to retrieve mail and felt a twinge in the right buttock and hip region. He stated that his condition was not improving. On March 18, 2009 Dr. Stein noted a history of injury and diagnosed resolving low back and right hip sprain and advised that appellant work light duty.

Appellant was also treated by Dr. William Brewster, a Board-certified internist. In state workers' compensation forms dated March 23 to April 13, 2009, Dr. Brewster diagnosed lumbar and hip strain. Appellant reported that on March 5, 2009 he bent over to collect mail and injured his back and buttocks. Dr. Brewster checked a box "yes" that appellant's injury and disability were the result of the injury described by him. On April 7, 2009 he noted that appellant presented on March 11, 2009 and described an injury to his right buttock and hip when he bent over a snow bank to retrieve mail from a mailbox. Dr. Brewster diagnosed possible piriformis strain and opined that appellant sustained a work-related injury.

On April 2, 2009 Dr. Peter J. Dirksmeier, a Board-certified orthopedist, treated appellant for right buttock pain after a work injury of March 5, 2009. Appellant reported retrieving mail from a mailbox and felt a twinge in his buttocks that developed into groin and thigh pain the next day. Dr. Dirksmeier noted that appellant had a history of intermittent back pain for years but no

buttock pain until his injury. He advised that a lumbar spine x-ray showed mild narrowing at L5-S1, but was otherwise normal. Dr. Dirksmeier diagnosed piriformis strain and recommended physical therapy. In an April 2, 2009 state workers' compensation form, he diagnosed right hip external rotator strain. Appellant noted that on March 5, 2009 he was emptying a mailbox and twisted injuring his buttocks. Dr. Dirksmeier checked a box "yes" that appellant's injury and disability were work related.

In an April 27, 2009 decision, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that he sustained the March 5, 2009 incident as alleged. Further the medical evidence was not sufficient to establish an injury.

Appellant requested an oral hearing that was held on August 14, 2009. He submitted reports from Dr. Brewster dated April 13 to 27, 2009. Dr. Brewster diagnosed piriformis strain and noted improvement in appellant's condition. He checked a box "yes" that appellant's injury and disability were employment related. Dr. Brewster continued appellant's work restrictions.

In a May 15, 2009 report, Dr. Dirksmeier noted treating appellant for right buttock pain, following the work-related injury of March 5, 2009. He diagnosed piriformis strain. Appellant reported that his ability to walk his mail route was severely compromised and Dr. Dirksmeier opined that his disability was predominately due to the left knee and right ankle pain. On June 12, 2009 Dr. Dirksmeier noted appellant's complaints of back and right buttock pain subsequent to March 5, 2009 and opined his assessment was unchanged. In May 15 and June 12, 2009 state workers' compensation form reports, he diagnosed degenerative disease and checked a box "yes" that appellant's condition was work related. On the June 12, 2009 form report, Dr. Dirksmeier noted that appellant's condition was improving.

In a May 19, 2009 workers' compensation form, Dr. Ira M. Parsons, a Board-certified orthopedic surgeon, noted treating appellant for a December 7, 2005 injury and diagnosed left knee degenerative disease. He found that appellant was disabled from work. Dr. Parsons checked a box "yes" that appellant's condition was work related. In a July 13, 2009 workers' compensation form, Dr. Geppert reiterated his prior opinion.

On July 29, 2009 appellant was treated by Dr. Bruce C. Gendron, an osteopath, who diagnosed right proximal hamstring partial tear and ischial bursitis. Dr. Gendron noted within a degree of medical certainty that appellant's injury was likely related to the incident while working as a mail carrier on March 5, 2009. He noted that mechanism of appellant's injury was stepping forward with his right foot and twisting in an awkward position to reach into a mailbox. This resulted in right buttock pain. Dr. Gendron noted that appellant was not at maximum medical improvement but could return to modified duty with restrictions.

By decision dated November 16, 2009, the hearing representative affirmed the April 27, 2009 decision of the Office, finding factual discrepancies concerning the March 5, 2009 incident.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 the Act, that the claim was filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

To determine whether an employee actually sustained an injury in the performance of duty, the Office 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.<sup>3</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>4</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>5</sup>

The second component of fact of injury 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, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

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

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<sup>1</sup> *Id.*

<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *See Mary Jo Coppolino*, 43 ECAB 988 (1992).

<sup>5</sup> *Allen C. Hundley*, 53 ECAB 551 (2002); *Earl David Seal*, 49 ECAB 152 (1997).

<sup>6</sup> *Id.*

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Office denied appellant's claim on the grounds that he failed to establish that he sustained the injury as alleged on March 5, 2009. The Board finds that the evidence supports that on March 5, 2009 appellant was emptying mailboxes on his route and bent over to retrieve the mail from a mailbox. Appellant provided a consistent history of the injury as reported on his CA-1, medical reports and in his testimony. In March 11 and 18, 2009 workers' compensation forms and other progress notes prepared by Dr. Stein, who noted appellant's treatment for a low back and right hip strain which occurred on March 5, 2009 when he bent over to collect mail out from mailboxes. Similarly, Dr. Brewster noted in workers' compensation forms dated March 23 to April 27, 2009, noted that appellant reported sustaining a lumbar and hip strain on March 5, 2009 when he bent over to collect mail. On April 2, 2009 Dr. Dirksmeier treated appellant for right buttock pain occurring after a March 5, 2009 work-related injury. Appellant's testimony at the August 14, 2009 hearing further supports his claim, noting that on March 5, 2009 he was emptying mailboxes and placing mail in a white bucket in an area covered in snow when he bent over and felt a twinge in his right buttocks. He further explained that he did not file a claim until March 12, 2009 because at the time of the incident the injury did not seem bad enough to warrant a report and he thought it would heal without treatment. Appellant indicated that after four days of pain in the right hip and buttock he realized that he would have to report the injury and seek treatment. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus has established that the employment incident, bending over to empty mailboxes, occurred as alleged on March 5, 2009.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a right hip and buttock injury on March 5, 2009 causally related to bending over to empty mailboxes.

A July 29, 2009 report from Dr. Gendron diagnosed right proximal hamstring partial tear and ischial bursitis. Dr. Gendron opined that the mechanism of appellant's injury was stepping forward with the right foot, reaching into a mailbox and opined that within a degree of medical certainty appellant's injury was "likely" related to the incident of March 5, 2009. The Board notes that Dr. Gendron's report provides some support for causal relationship but is insufficient to establish the claimed low back and buttocks injuries were causally related to his employment duties. Dr. Gendron couches his opinion in speculative terms noting that appellant's condition was "likely" related to the incident of March 5, 2009.<sup>9</sup> He also provided insufficient medical

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<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>9</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

reasoning to support his opinion on causal relationship. Dr. Gendron did not explain the process by which reaching into a mailbox would cause or aggravate the diagnosed condition nor did he address the relevance of appellant's prior history of back pain in his opinion. Therefore, his report is insufficient to meet appellant's burden of proof.

On April 7, 2009 Dr. Brewster noted that appellant presented on March 11, 2009 and described an injury to his right buttock and hip while retrieving mail from a mailbox. He diagnosed acute low back and right hip strain with possible piriformis strain and opined that appellant sustained a work-related injury. Although Dr. Brewster provides some support for causal relationship his statements are conclusory. He did not provide medical rationale in which he explained the reasons behind his conclusion, particularly explaining how any particular duties performed during a particular period would cause or aggravate appellant's claimed condition. In workers' compensation forms dated March 23 to April 27, 2009, Dr. Brewster diagnosed piriformis strain and checked a box "yes" that appellant's condition was employment related. However, the Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>10</sup> Dr. Brewster did not otherwise explain the reasons why the March 5, 2009 incident caused or aggravated the diagnosed condition. These reports are insufficient to establish appellant's burden of proof.

Appellant submitted an April 2, 2009 report from Dr. Dirksmeier who treated appellant for right buttock pain following a work-related injury of March 5, 2009 and diagnosed piriformis strain. Similarly, in May 15 and June 12, 2009 reports, Dr. Dirksmeier noted appellant's complaints and diagnosis and referenced a work-related injury of March 5, 2009. He opined that appellant's ability to walk his mail route was compromised predominately due to knee and ankle pain. However, these notes fail to provide a rationalized opinion on how appellant's employment could have caused or aggravated his claimed condition.<sup>11</sup> Dr. Dirksmeier failed to explain how bending over to empty mailboxes would cause the piriformis strain and why it would not be caused by nonemployment factors. In workers' compensation forms dated April 2 to June 12, 2009, he diagnosed degenerative disease and checked a box "yes" that appellant's injury and disability were employment related. As noted, a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value. These reports are insufficient to establish the claim.

Appellant also submitted March 11 and 18, 2009 workers' compensation forms and progress notes from Dr. Stein, who diagnosed low back and right hip strain which appellant reported occurred on March 5, 2009 after bending over to collect mail from mailboxes. Dr. Stein checked a box "yes" that appellant's condition was employment related but he did not provide any explanation or rationale in support of his opinion on causal relationship. Consequently these reports are of diminished probative value and do not establish appellant's traumatic injury claim.

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<sup>10</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

<sup>11</sup> *See Jimmie H. Duckett*, *supra* note 8.

Appellant also submitted reports beginning March 9, 2009 from Dr. Geppert who diagnosed status post ankle sprain and tibular fracture. Although Dr. Geppert indicated that appellant's condition was work related, he did not provide a history of an injury occurring on March 5, 2009.<sup>12</sup> Rather he addressed another injury to appellant's ankle and left knee which is not before the Board on the present appeal. Other medical reports provided by appellant do not specifically address how the March 5, 2009 work incident caused a right hip and buttock injury.

On appeal, appellant's attorney, asserts that the evidence is undisputed that appellant sustained an injury on March 5, 2009 at the time, place and in the manner alleged and that the hearing representative improperly denied his claim. The Board notes that the evidence supports that on March 5, 2009 appellant was emptying mailboxes on his route and bent over to remove mail from a mailbox. However, as explained, appellant did not submit a rationalized medical report which establishes that he sustained a right hip and buttock injury on March 5, 2009 causally related to his employment duties.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right leg and buttocks injury causally related to his March 5, 2009 employment incident.<sup>13</sup>

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<sup>12</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

<sup>13</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 19, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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