

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

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S.M., Appellant )

and )

U.S. POSTAL SERVICE, CHARLOTTE )  
PROCESSING & DISTRIBUTION CENTER, )  
Charlotte, NC, Employer )

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**Docket No. 10-1592  
Issued: May 2, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 27, 2010 appellant filed a timely appeal of the March 22, 2010 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain a traumatic injury. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> 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 established that she sustained back and right leg injuries in the performance of duty on October 6, 2009, as alleged.

**FACTUAL HISTORY**

On January 27, 2010 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that at 6:45 p.m. on October 6, 2009 she developed lumbar sciatica

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

and hurt her right leg while walking with Sergio Lopez, supervisor of distribution operations, to see Pmischael Frye, a supervisor. She asked him to slow down because her back was hurting and she was unable to keep up with him. Appellant did not stop work following the October 6, 2009 incident. On the reverse of the claim form, Ms. Frye stated that appellant advised her that she did not sustain a work-related injury.

In an undated narrative statement, appellant further described the October 6, 2009 incident. Her leg collapsed as she walked to Ms. Frye's office. As she fell, she was caught by Eleane Wallace, supervisor of distribution operations. Appellant cried due to the terrible pain in her back shooting down her right leg. She arrived at Ms. Frye's office and was asked if she had been involved in an accident. Appellant responded no, because she did not understand what Ms. Frye meant by "accident" as she had not fallen down and been run over or hit by something. She was transported to a hospital by ambulance for medical treatment.

In a January 27, 2010 note, appellant advised Mr. Lopez that she sustained an injury on October 6, 2009 and requested a Form CA-1.

An employing establishment injury/medical condition notification form completed by Ms. Frye provided a history that on October 6, 2009 appellant was walking to the front office when her right leg collapsed. She experienced pain in her back shooting down into her right leg. Appellant advised Ms. Frye that she did not sustain a work-related accident or injury. She was transported by ambulance to an emergency room for medical treatment.

An unsigned and undated note indicated that appellant did not have or report an accident, but she wanted a limited-duty work assignment.

In an October 13, 2009 disability certificate, a Dr. Sarah Lantz<sup>2</sup> advised that appellant could return to work with restrictions.

In a December 15, 2009 medical report, Dr. Eric B. Laxer, a Board-certified orthopedic surgeon, advised that appellant had sciatica but could return to work with restrictions. In a December 18, 2009 report, he noted that there was no specific injury described but reported "pain during the course of her job." Dr. Laxer noted her work duties which included loading and unloading trucks, setting up letters and flats and operating automated machines. He diagnosed back and leg pain due to her work duties. Dr. Laxer listed appellant's physical restrictions.

By letter dated February 11, 2010, the Office addressed the factual and medical evidence appellant needed to submit.

In a September 3, 2009 report, Dr. G. Ryan Shelton, a Board-certified internist, advised that appellant had asymptomatic microscopic hematuria. Appellant had low back pain that was likely a muscular strain. She had significant degenerative changes based on a lumbar x-ray. Appellant had right wrist pain that was likely tendinitis, but possibly carpal tunnel syndrome. Dr. Shelton advised that appellant would remain on light duty. In an October 8, 2009 report, he reviewed a history of her low back pain, noting that she received steroid epidural injections on

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<sup>2</sup> The Board notes that the professional qualifications of Dr. Lantz are not available.

September 18 and October 5, 2009. Dr. Shelton noted that on October 6, 2009 appellant had to be carried out on a stretcher and was transported to an emergency room for treatment of her back pain. He listed his findings on physical examination and diagnosed ongoing low back pain with right-sided sciatica despite the two recent steroid epidural injections.

In a lumbar magnetic resonance imaging (MRI) scan report dated September 10, 2009, Dr. Robert J. Raible, a Board-certified radiologist, found that appellant had scoliosis with multilevel degenerative disc and facet arthropathy, mild canal stenosis greater in the lateral recesses bilaterally at L4-5 with mild right and severe left foraminal stenosis, severe right L5-S1 foraminal stenosis, degenerative changes at the pseudoarticulation of the right L5 transverse process and right sacral ala and milder degenerative disc and facet changes within the remainder of the lumbar spine.

An October 6, 2009 medical record from Carolinas Medical Center Mercy indicated that appellant was treated in its emergency room for back pain and spasms in her right leg. She was diagnosed as having back pain and released to return to work on October 9, 2009.

In an electromyogram/nerve conduction study report dated November 17, 2009, Dr. Alexander W. Chasnis, a Board-certified physiatrist, stated that the results were normal with below average pain regarding appellant's right lower extremity. There was no electrodiagnostic evidence of right lower extremity mononeuropathy, peripheral neuropathy, polyneuropathy and lumbar plexopathy, radiculopathy or myopathy. Dr. Chasnis advised that classical radicular symptoms with a negative EMG/NCS may be attributed to nerve root irritation without axonal damage or due to pure sensory radiculopathy.

In a lumbar computerized tomography scan report dated December 21, 2009, Dr. Jay W. Patti, a Board-certified radiologist, stated that appellant had disc degeneration at L4-L5 with moderate left greater than right neural foraminal stenosis and mild central canal stenosis affecting the left greater than the right lateral recess. She also had facet degenerative changes right greater than the left causing right lateral recess neural foraminal stenosis.

In an undated narrative statement, appellant described her work duties which included loading and unloading truckloads of empty all-purpose containers (APC), letter trays and flat mail tubs. She worked with 10 bulk mail carriers and 12 APCs. Appellant worked overtime loading and unloading trucks, or working in "Cold Mix." Some packages weighed over 70 pounds. In September 2009, appellant complained about pain in her back and right leg in the presence of Mr. Lopez and two other employees. She went home as instructed by Mr. Lopez. Appellant subsequently sought medical treatment.

In a January 5, 2010 narrative statement, James Truesdale, an employee, stated that appellant was required to work outside her physical limitations. She was unable to perform her work duties despite her best efforts due to constant migraine headaches, back pain or spasms and pain in her legs. Mr. Truesdale stated that when appellant presented legitimate medical documentation regarding her limitations to a supervisor, the supervisor would instruct her to follow her physician's orders.

In a March 22, 2010 decision, the Office denied appellant's claim, finding that the evidence did not establish that the October 6, 2009 incident occurred as alleged. It also found that the medical evidence failed to establish that she sustained a back injury causally related to the claimed incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>3</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 filed within the applicable time limitation; that an injury was sustained while 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>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>6</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *B.F.*, Docket No. 09-60 (issued March 17, 2009).

<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *Paul Foster*, 56 ECAB 208 (2004).

<sup>8</sup> *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

<sup>10</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

## ANALYSIS

To support fact of injury an employee must establish that an incident occurred at the time, place and in the manner alleged.<sup>12</sup> The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic incident in the performance of duty on October 6, 2009.

Appellant initially asserted that she injured her back and right leg while in the performance of duty as she walked to the office of Ms. Frye, a supervisor, on October 6, 2009. Subsequently, she contended that her back and right leg injuries were caused by her work duties which involved loading and unloading truckloads of empty APCs and letter trays and flat mail tubs weighing over 70 pounds, and working in the “Cold Mix.” However, Ms. Frye stated that appellant advised her that she did not sustain a work-related injury on October 6, 2009. Ms. Frye obtained a history from appellant that she experienced back pain shooting down into her right leg when her right leg collapsed as she walked to the front office. Appellant’s contention that her lack of understanding Ms. Frye’s use of the term “accident” is not supported by the record. On October 6, 2009 she provided the necessary information regarding the alleged incident to Ms. Frye who completed the employing establishment’s notification form for an injury or medical condition. An unsigned and undated note stated that appellant did not sustain or report an accident. Mr. Truesdale, an employee, stated that appellant’s physical limitations were disregarded by her supervisor in assigning her work duties. He did not address whether she was performing her assigned work duties on October 6, 2009, as alleged. In delineating appellant’s work restrictions, Dr. Laxer reported on December 18, 2009 that appellant did not report an injury but felt pain while performing her work duties.

The evidence of record indicates that appellant suffered from preexisting back and right leg conditions. She complained about back and right leg pain to Mr. Lopez, a supervisor, and two unidentified employees in September 2009. Appellant went home as instructed by Mr. Lopez and sought medical treatment. Dr. Shelton’s September 3, 2009 report found that appellant had several lumbar conditions, including low back pain that was likely a muscular strain and significant degenerative changes. In an October 8, 2009 report, he reviewed a history that appellant received steroid epidural injections on September 18 and October 5, 2009 to treat her low back pain. Although Dr. Shelton stated that she was transported to an emergency room for medical treatment of her back pain on October 6, 2009, he did not provide any further detail regarding the history of injury. Dr. Raible’s September 10, 2009 lumbar MRI scan report found that appellant had scoliosis with multilevel degenerative disc and facet arthropathy, mild canal stenosis greater in the lateral recesses bilaterally at L4-5 with mild right and severe left foraminal stenosis, severe right L5-S1 foraminal stenosis, degenerative changes at the pseudoarticulation of the right L5 transverse process and right sacral ala and milder degenerative disc and facet changes within the remainder of the lumbar spine.

While appellant was treated for her back pain and right leg spasms on October 6, 2009 as indicated by the hospital record from Carolinas Medical Center Mercy, this evidence did not provide any history of her alleged injuries.

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<sup>12</sup> Tracey P. Spillane, 54 ECAB 608 (2003); Betty J. Smith, 54 ECAB 174 (2002).

The Board finds that the factual and medical evidence of record is not sufficiently detailed to establish that an employment incident occurred in the performance of duty on October 6, 2009 as alleged. There are inconsistencies as to the history of injury as to cast serious doubt on the validity of appellant's claim. Due to the deficiencies and inconsistencies in the factual and medical evidence, the Board finds that appellant has not met her burden of proof in establishing that she experienced an employment-related incident at the time, place and in the manner alleged.<sup>13</sup>

The Board finds that the issue of reimbursement of appellant's medical expenses is not in posture for decision. The Board has noted that the Office procedures provide that when an employee sustains a job-related injury that may require medical treatment, the designated employing establishment official shall promptly authorize such treatment by giving the employee a properly executed (Form CA-16) with four hours.<sup>14</sup> Cases of doubtful nature so far as compensability is concerned, may also be referred using a Form CA-16 for medical services and, in cases involving unusual circumstances, the Office may, in the exercise of its discretion, authorize treatment or approve payment for medical expenses incurred, other than by a Form CA-16.<sup>15</sup>

The record indicates that appellant was transported to the hospital where she was treated. No Form CA-16 is of record. Although the Office adjudicated and denied appellant's claim of injury, it did not adjudicate the issue of whether she should be reimbursed for medical expenses incurred. The case will be remanded for further development of this issue.<sup>16</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained back and right leg injuries in the performance of duty on October 6, 2009, as alleged and that the case is not in posture as to whether her medical expenses should be reimbursed.

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<sup>13</sup> As appellant did not establish an employment incident alleged to have caused his injury, it is not necessary to consider any medical evidence. *S.P.*, *supra* note 5; *Bonnie A. Contreras*, *supra* note 8.

<sup>14</sup> *Val D. Wynn*, 40 ECAB 666 (1989).

<sup>15</sup> *Id.*; 20 C.F.R. § 10.304.

<sup>16</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action on the issue of reimbursement of medical expenses.

Issued: May 2, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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