

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

A.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wallingford, CT, Employer**

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**Docket No. 10-448
Issued: September 16, 2011**

Appearances:
W. Martyn Philpot, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 27, 2009 appellant, through counsel, filed a timely appeal from a June 1, 2009 decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's traumatic injury claim.¹ Pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerit of this case.

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on June 1, 2009, the 180-day computation begins June 2, 2009. One hundred and eighty days from June 2, 2009 was November 30, 2009. Since using December 7, 2009, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark would be considered the date of filing. *See* 20 C.F.R. § 501.3(f)(1). However, the date of the U.S. Postal Service postmark is illegible. Pursuant to 20 C.F.R. § 501.3(f)(1) counsel submitted a statement attesting to the fact that he mailed the appeal on November 27, 2009. As counsel mailed the appeal on November 27, 2009, the appeal is deemed timely filed as of that date.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on November 8, 2008, as alleged.

FACTUAL HISTORY

On November 20, 2008 appellant, then a 42-year-old mail handler, filed a traumatic injury claim alleging that on November 8, 2008 he injured his back while pushing a container of mail.

Appellant submitted medical evidence with his claim. A November 8, 2008 emergency room discharge form from Yale Medical Center noted that he was treated that day and released to return to work on November 13, 2008.

In a December 10, 2008 work capacity evaluation (Form OWCP-5c), Dr. Babu Kumar, a treating Board-certified internist, advised that appellant was totally disabled through December 30, 2008. He diagnosed severe lower back pain, right hand numbness and neck pain.

The record also contains notes dated December 5 to 22, 2008 from an unknown provider reporting massage and physical therapy treatment.

By letter dated January 5, 2009, OWCP informed appellant the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence necessary to establish his claim and given 30 days to provide the requested information.

In response to OWCP's request, appellant submitted additional treatment notes from an unknown provider dated December 12, 2008 to January 5, 2009 for massage and physical therapy. He also submitted a December 3, 2008 report from Dr. Kumar noting an injury date of November 8, 2008 and containing illegible diagnoses.

In a January 23, 2009 attending physician's report (Form CA-20), Dr. Kumar reported that appellant sustained an injury to his mid to low back due to pushing a mail container on November 8, 2008. He diagnosed low back pain and spasm and checked "yes" to the question of whether the diagnosed condition was employment related. Under explanation, Dr. Kumar wrote "by history provided." He noted that appellant was currently totally disabled from working due to his employment injury.

By decision dated February 5, 2009, OWCP denied appellant's claim on the grounds that he had failed to establish fact of injury. It found that the evidence of record was sufficient to establish that the claimed event occurred; but the medical evidence was not sufficient on causal relation to the employment incident.

Subsequent to the decision, OWCP received additional medical evidence. On December 3, 2008 Dr. Kumar noted an injury date of November 8, 2008 and illegible diagnoses. A progress note by an unknown provider for December 3, 2008 listed physical findings and diagnoses of neck pain, lower back pain and right hand numbness. In a January 23, 2009 duty

status report, Dr. Kumar diagnosed lower back pain due to the pushing of mail on November 8, 2008. He indicated that appellant was unable to resume work at that time.

On February 16, 2009 appellant requested a review of the written record by OWCP's hearing representative. In support of his request, he submitted a December 30, 2008 report from Dr. Kumar noting a November 8, 2008 injury date and diagnosing neck and lumbosacral pain and right hand numbness.

By decision dated June 1, 2009, OWCP's hearing representative affirmed the denial of appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

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.⁶ 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.⁷ 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.⁸

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); .

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Barbara R. Middleton*, 56 ECAB 634 (2005); *B.F.*, Docket No. 09-60 (issued March 17, 2009).

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3; *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

doubt on a claimant's statements.⁹ The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹⁰

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹¹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹³ 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.¹⁴ 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.¹⁵

ANALYSIS

OWCP accepted that an employment incident occurred on November 8, 2009 when appellant was pushing mail. The issue is whether he submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that the medical evidence submitted does not contain a rationalized medical opinion addressing how the work-related incident caused or aggravated any medical condition or disability. Therefore, appellant has failed to meet his burden of proof.

Appellant submitted treatment notes for the period December 5 to January 5, 2009 from an unknown provider pertaining to massage and physical therapy. This evidence provides no opinion on causal relation. Appellant also submitted a November 8, 2008 Yale Medical Center emergency room discharge form noting that he could return to work on November 13, 2008 and an illegible prescription slip. The December 3, 2008 progress note from an unidentified person

⁹ *Barbara R. Middleton*, *supra* note 6; *C.S.*, *supra* note 4.

¹⁰ *H.G.*, 59 ECAB 552 (2008); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹³ *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

¹⁴ *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

¹⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *I.J.*, 59 ECAB 408 (2008).

listed physical findings and diagnoses of neck pain, lower back pain and right hand numbness. These reports, too, failed to provide any opinion addressing how appellant's treatment related to the accepted incident. The Board has held that a medical report is not probative if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2).¹⁶ The Board finds that none of these reports are sufficient to support appellant's claim as it is unclear whether they were prepared by a physician.

The reports from Dr. Kumar are also insufficient to establish appellant's claim. In reports dated December 3 and 30, 2008, Dr. Kumar listed an injury date of November 8, 2008 and provided diagnoses which were illegible. In a December 10, 2008 Form OWCP-5c, he diagnosed severe lower back pain, right hand numbness and neck pain and indicated that appellant was totally disabled. Dr. Kumar provided a history of the injury in a January 23, 2009 report and diagnosed low back pain and spasm. He checked "yes" to the question of whether the diagnosed condition was employment related based on the history provided by appellant. In a duty status report also dated January 23, 2009, Dr. Kumar diagnosed low back pain as a result of pushing mail on November 8, 2008; however, he did not explain how the diagnoses of severe lower back pain and spasm, right hand numbness and neck pain were caused or contributed to by the November 8, 2008 employment incident.¹⁷ He did not address how the November 8, 2008 employment incident of pushing mail resulted in the reported diagnoses. Dr. Kumar failed to explain how appellant's various symptoms were caused or aggravated by pushing mail. He also failed to provide a full medical history of any prior treatment. The Board finds that Dr. Kumar's reports are insufficient to establish that the diagnosed conditions were caused or aggravated by the accepted employment incident.

Appellant expressed his belief that his back condition was exacerbated by pushing a container of mail on November 8, 2008. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁸ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Appellant's belief that his condition was exacerbated by the work-related incident is not determinative.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described a history of his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to

¹⁶ *Thomas L. Agee*, 56 ECAB 465 (2005); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁷ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

¹⁸ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *L.D.*, Docket No. 09-1503 (issued April 15, 2010).

¹⁹ *Roy L. Humphrey*, 57 ECAB 238 (2005); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

submit adequate medical documentation. He has not met his burden of proof to establish that he sustained an injury in the performance of duty on November 8, 2008, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office 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 has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on November 8, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2009 is affirmed.

Issued: September 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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