

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dayton, OH, Employer**

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**Docket No. 11-612
Issued: September 23, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 January 13, 2011 appellant filed a timely appeal from the December 14, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a March 20, 2006 work injury. 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 an injury in the performance of duty on March 20, 2006.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In an April 16, 2008 decision,² the Board affirmed an April 9, 2007 OWCP decision finding that appellant did not sustain an employment injury on March 20, 2006. The Board agreed with OWCP's determination that, although appellant established the occurrence of an employment incident on March 20, 2006, he did not submit a rationalized medical report showing that he sustained a medical condition due to that incident.³ In a January 25, 2010 decision,⁴ the Board affirmed OWCP's April 1, 2009 decision denying appellant's claim that he sustained an employment injury on March 20, 2006. The Board discussed the new medical evidence submitted by appellant and found that it did not contain a rationalized medical opinion relating his claimed condition to the accepted March 20, 2006 employment incident. In a December 18, 2008 report, Dr. Martin Fritzhand, an attending Board-certified preventive medicine physician, noted that appellant reported that he injured his back during military service 10 years prior but had been "basically pain-free" from 2003 until the March 20, 2006 employment incident. He posited that on March 20, 2006 appellant sustained an aggravation of degenerative joint disease and facet arthropathy with chronic low back pain. As part of its determination that Dr. Fritzhand's opinion on causal relationship lacked adequate medical rationale, the Board noted that his opinion was not based on an accurate factual and medical history. The Board stated that Dr. Fritzhand placed great emphasis on his understanding that appellant did not complain of any notable back pain between 2003 and the March 20, 2006 incident, but indicated that the medical evidence of record actually showed that appellant complained of significant back pain between 2003 and 2006.⁵ The facts and the circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

On June 17, 2010 appellant, through counsel, requested reconsideration of the denial of his claim for a March 20, 2006 employment injury. He submitted a March 2, 2010 letter of Dr. Fritzhand (addressed to his counsel) and asserted that the letter established a causal relationship between the March 20, 2006 injury and his ongoing low back pain.

In his March 20, 2006 letter, Dr. Fritzhand stated that when he evaluated appellant on December 18, 2008 he reported that he sustained a low back injury about 10 years prior but indicated that whatever symptoms he had experienced were negligible at the time of his March 2006 injury. He stated that whether appellant "was pain-free or had some minimal

² Docket No. 07-1415 (issued April 16, 2008). On April 4, 2006 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that he injured his low back on March 20, 2006 when he slipped on ice while walking his postal route. He indicated that he did not fall to the ground but that he twisted his back. Appellant stopped work on April 4, 2006.

³ The Board noted that appellant sustained injury to his low back while in military service, but that the medical evidence did not provide an adequate explanation of how the March 20, 2006 incident aggravated or contributed to the degenerative disc disease of his low back.

⁴ Docket No. 09-1189 (issued January 25, 2010).

⁵ The Board noted that appellant had submitted a July 23, 2008 report of Dr. Girija Gopalswamy, an attending Board-certified internist, who noted that appellant reported that, from the time of his discharge from the military until March 20, 2006, his back pain stayed about the same at 5 out of a scale of 10.

symptoms is only splitting hairs and not clinically relevant.” Dr. Fritzhand indicated that appellant did sustain a well-documented low back injury in March 2006 and noted that his response to facet injections was certainly indicative of an inflammatory response to his injury. He stated:

“There is certainly a causal relationship between the March 20, 2006 injury and [appellant’s] ongoing low back pain. [Appellant’s] current condition is temporally related and has been caused by the March 20, 2006 injury. I am perplexed as to the need for ‘any notable discussion of his medical history, including examination and testing findings, prior to March 20, 2006. We do have a factual history of [appellant’s] current injury and the studies obtained shortly thereafter. This should certainly be sufficient. In addition, I am equally perplexed about the comment concerning my report that ‘his opinion on causal relationship is not based on an accurate factual and medical history.’ Is my report based on inaccuracies? I hardly think so. Thus, it is my medical opinion that, first, there has been sufficient evidence submitted to establish that [appellant] actually experienced the employment incident at the time, place and in the manner alleged. Second, medical evidence has been submitted to establish that the employment incident caused a personal injury. [Appellant] has sustained a traumatic injury in the performance of duty. I certainly hope that his injury will be allowed through [FECA].”

In a December 14, 2010 decision, OWCP denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to show that he sustained an injury in the performance of duty on March 20, 2006. It determined that the March 2, 2010 letter of Dr. Fritzhand was not sufficiently well rationalized to establish that appellant sustained an employment injury on March 20, 2006.

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 timely filed within the applicable time limitation period of FECA, 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.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ The term “injury” as defined by FECA, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.¹⁰

ANALYSIS

Appellant alleged that he injured his low back on March 20, 2006 when he slipped on ice while walking to his postal route. He indicated that he did not fall to the ground but that he twisted his back. In April 16, 2008 and January 25, 2010 decisions, the Board affirmed OWCP’s prior denials of appellant’s claim for a March 20, 2006 employment injury. The Board agreed with its determination that, although he established the occurrence of an employment incident on March 20, 2006, appellant did not submit a rationalized medical report showing that he sustained a medical condition due to that incident.

In June 2010 appellant requested reconsideration of his claim and submitted a March 2, 2010 letter in which Dr. Fritzhand, an attending Board-certified preventive medicine physician, asserted that appellant suffered an employment injury on March 20, 2006. Dr. Fritzhand stated that appellant sustained a well-documented low back injury on March 20, 2006 because his current condition was “temporally related” and his response to facet injections was “certainly indicative of an inflammatory response to his injury.”

The Board finds that Dr. Fritzhand did not provide sufficient medical rationale in support of his opinion on causal relationship and OWCP properly found that his March 2, 2010 letter did not establish that appellant sustained an employment injury on March 2, 2006.

Dr. Fritzhand suggested that appellant sustained an aggravation of preexisting degenerative disc disease of his low back, but he did not describe the medical process of how the March 20, 2006 incident could have aggravated appellant’s underlying back condition. He noted that appellant sustained a service-related back injury about 10 years prior, but he did not provide any notable discussion of appellant’s medical history, including examination and testing findings, prior to March 20, 2006. Dr. Fritzhand did not describe the March 20, 2006 employment incident in any detail and did not explain how this incident, which involved twisting of the back without a fall to the ground, could have caused the claimed injury to appellant’s low back. He made reference to appellant’s response to facet injections but did not explain how this response showed that he had sustained an employment injury on March 20, 2006. Dr. Fritzhand did not explain why appellant’s continuing low back problems were not solely due to the progression of his nonwork-related back condition.

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹⁰ *Elaine Pendleton*, *supra* note 6; 20 C.F.R. § 10.5(a)(14).

In his March 2, 2010 letter, Dr. Fritzhand took issue with the Board's characterization of his December 18, 2008 opinion as not being based on an accurate factual and medical history. In a January 25, 2010 decision, the Board had noted that Dr. Fritzhand placed great emphasis on his understanding that appellant did not complain of any notable back pain between 2003 and the March 20, 2006 incident, but indicated that the medical evidence of record actually showed that he complained of significant back pain between 2003 and 2006.¹¹ In his March 2, 2010 letter, Dr. Fritzhand did not discuss the medical evidence showing that appellant complained of significant back pain between 2003 and 2006 and did not explain why he continued to assert that appellant was pain-free or had minimal back symptoms between 2003 and March 20, 2006. Appellant did not submit any other medical evidence in support of his June 2010 reconsideration request and OWCP properly denied his claim that he sustained an employment injury on March 20, 2006.

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 an injury in the performance of duty on March 20, 2006.

¹¹ For example, Dr. Gopalswamy, an attending Board-certified internist, noted in a July 23, 2008 report that appellant reported that, from the time of his discharge from the military until March 20, 2006, his back pain stayed about the same at 5 out of a scale of 10.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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