

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

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**W.B., Appellant**

**and**

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

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**Docket No. 11-1413  
Issued: January 18, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 27, 2011 appellant filed a timely appeal from a May 19, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his lower back, right buttock and right leg conditions are causally related to factors of his federal employment.

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

<sup>2</sup> The Board notes that, following the issuance of the May 19, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant stated that he held an automation bid for five years and that his duties included feeding mail into a four-tiered machine, sweeping it into trays and then loading it onto rollers which required frequent bending and twisting.

### **FACTUAL HISTORY**

On January 29, 2011 appellant, then a 57-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 28, 2011 he sustained a lower back, right buttock and right leg injury while lifting and bending over time in the performance of duty.

On February 7, 2011 the employing establishment controverted the claim on the basis that lifting and bending over a period of time constituted an occupational disease claim.

Appellant submitted reports by Dr. Tazeen Aleem, an internist, dated January 31 to March 9, 2011. Dr. Aleem diagnosed lower back sprain and lumbar radiculopathy. He reported that appellant presented with complaints of gradual onset of constant episodes of severe right lower back pain radiating to the right buttock, right thigh, right lower leg and right foot. Dr. Aleem indicated that appellant's symptoms resulted from twisting, bending and lifting at work. He advised appellant to return to work on March 14, 2011 with restrictions.

Appellant also submitted physical therapy notes covering the period February 10 to March 17, 2011.

By letter dated April 14, 2011, OWCP notified appellant that his claim had been reopened for consideration of the merits as the medical bills had exceeded \$1,500.00. It acknowledged his allegation that the injury occurred over a period of time due to lifting and bending and requested additional factual and medical evidence to determine if his traumatic injury claim should be adjudicated as an occupational disease claim. OWCP allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted physical therapy notes covering the period March 17 to 23, 2011.

By decision dated May 19, 2011, OWCP denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish fact of injury finding that the injury did not occur as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, and that an injury<sup>4</sup> was sustained in the performance of duty. These

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 implicated employment factors.<sup>7</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>8</sup>

### ANALYSIS

Appellant attributed his condition to lifting and bending in his federal employment. The employing establishment noted the occupational nature of his allegations. It is well established that a claim for compensation need not be filed on any particular form. The Board has held that a claim may be made by filing any paper containing words which reasonably may be construed or accepted as a claim.<sup>9</sup> Appellant alleged and OWCP acknowledged that appellant's back complaints arose over time when performing his employment duties. Appellant's description thus comports with the definition of an occupational disease. Consequently, the issue is whether appellant met his burden of proof to establish that his lower back, right buttock and right leg conditions are causally related to factors of his federal employment.

The Board finds that appellant has failed to meet his burden of proof to establish that he developed an occupational disease in the performance of duty. The record reflects that appellant has a back condition and that his federal employment requires twisting, bending and lifting. However, appellant has not established that his condition is causally related to the factors of his federal employment.

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<sup>5</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

<sup>8</sup> See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> See *Dale M. Newbigging*, 44 ECAB 551 (1993). The Federal (FECA) Procedure Manual Part 2 -- Claims, *Time*, Chapter 2.801.3(a) (March 2011).

Appellant submitted reports by Dr. Aleem who diagnosed lower back sprain and lumbar radiculopathy. He reported that appellant presented with complaints of gradual onset of constant episodes of severe right lower back pain radiating to the right buttock, right thigh, right lower leg and right foot. Dr. Aleem listed that appellant's symptoms resulted from twisting, bending and lifting at work. He advised appellant to return to work on March 14, 2011 with restrictions. Dr. Aleem failed to directly address the issue of causal relationship. He did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as twisting, bending and lifting, caused or aggravated his lower back, right buttock and right leg conditions. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.<sup>10</sup> Lacking thorough medical rationale on the issue of causal relationship, the medical reports of Dr. Aleem are insufficient to establish that appellant sustained an employment-related injury.

The physical therapy notes covering the period February 10 to March 23, 2011 are of no probative value as physical therapists are not physicians under FECA.<sup>11</sup> As such, the Board finds that appellant did not meet his burden of proof with these submissions.

On appeal appellant stated that he held an automation bid for five years and that his duties included feeding mail into a four-tiered machine, sweeping it into trays and then loading it onto rollers which required frequent bending and twisting. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>12</sup> As found above, the medical evidence is insufficient to establish the claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

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 failed to meet his burden of proof to establish that he developed lower back, right buttock and right leg conditions in the performance of duty causally related to factors of his federal employment.

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<sup>10</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>11</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>12</sup> See *D.E.*, *supra* note 8. See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Robert G. Morris*, 48 ECAB 238 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 18, 2012  
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