

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

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**E.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Indianapolis, IN, Employer**

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**Docket No. 13-1021  
Issued: August 26, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 26, 2013 appellant filed a timely appeal from a February 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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.

**ISSUE**

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on January 3, 2013.

**FACTUAL HISTORY**

On January 7, 2013 appellant, then a 25-year-old rural carrier, filed a traumatic injury claim alleging that on January 3, 2013 he sustained an injury to his back or tail bone when he tried to pull a large box to get to parcels and fell backwards. The employing establishment

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

controverted his claim alleging that the incident did not occur in the performance of duty because he was working outside his regular craft without permission.

On January 17, 2013 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence.

On January 22, 2013 appellant responded to OWCP's development letter. He stated that it was common practice for rural carriers to perform the duties of a postal clerk if the clerks asked for help. Appellant explained that rural carriers could not deliver parcels until the clerks sorted them. He noted that at the time of the January 3, 2013 incident he was tipping tall boxes over so that clerks could sort the parcels for the rural carriers. Appellant reported that he experienced severe back pain and could not get up. He stated that he was first examined on January 8, 2013.

In various reports dated from January 8 to 24, 2013, a nurse practitioner noted that appellant was examined for a workers' compensation injury. She described that on January 3, 2013 appellant was pulling on the top of a box to pull it over when he fell to the ground and experienced pain in his back and tail bone. Upon initial examination, the nurse practitioner observed decreased range of motion with flexion. No vertebral spine tenderness, paraspinal tenderness, joint tenderness or muscle spasms were noted. Straight leg raise testing was mild to 90 degrees bilaterally. The nurse practitioner diagnosed back pain. In reports dated January 18 and 24, 2013 she noted an unremarkable examination. Straight leg raise testing was negative bilaterally.

In various return to work and duty status reports dated January 8 and 14, 2013 the nurse practitioner authorized appellant to return to work with restrictions. In a January 24, 2013 return to work note, appellant was authorized to return to full duty.

In a January 24, 2013 attending physician's report, Dr. Brenda K. Woods, a Board-certified family practitioner, and a nurse practitioner related that on January 3, 2013 appellant pulled a box at work and fell backward onto his back. Examination revealed decreased range of motion and mild pain with straight leg raise testing. Dr. Woods reported that an x-ray revealed mild scoliosis, but was otherwise unremarkable. She diagnosed back pain and checked a box marked "yes" that appellant's condition was caused or aggravated by the employment activity. Dr. Woods noted that he worked light duty from January 8 to 24, 2013 and was able to resume regular duty.

Appellant resubmitted the January 8, 14 and 24, 2013 return to work notes with the addition of Dr. Woods' signature.

In a decision dated February 25, 2013, OWCP denied appellant's claim on the grounds of insufficient medical evidence. It accepted that the January 3, 2013 incident occurred as alleged but denied the claim finding that the medical evidence did not establish that he sustained a diagnosed condition as a result of the accepted condition.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.<sup>5</sup> There are two components involved in establishing the fact of injury. 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>6</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.<sup>8</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>9</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>10</sup> The weight of the 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>11</sup>

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<sup>2</sup>*Id.* at §§ 8101-8193.

<sup>3</sup>*J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup>*G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup>*S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup>*Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup>*David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup>*T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>9</sup>*See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>10</sup>*I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup>*James Mack*, 43 ECAB 321 (1991).

## ANALYSIS

Appellant alleges that on January 3, 2013 he experienced back pain when he tried to tip over a large box and fell on his back. OWCP accepted that the January 3, 2013 incident occurred as alleged but found that the medical evidence was insufficient to establish that he sustained any diagnosed condition causally related to the accepted incident. The Board finds that appellant failed to meet his burden of proof to provide sufficient medical evidence demonstrating that he sustained a diagnosed back condition as a result of the January 3, 2013 employment incident.

Appellant submitted a January 24, 2013 attending physician's report cosigned by Dr. Woods who related his complaints of back pain. Dr. Woods noted that on January 3, 2013 appellant pulled a box at work and fell backward onto his back. Upon examination, she observed decreased range of motion and mild pain with straight leg raise testing. Dr. Woods diagnosed back pain and checked a box marked "yes" that appellant's condition was caused or aggravated by the employment activity. Although she accurately described the January 3, 2013 work incident, the Board notes that she does not provide any diagnosis of a back condition other than back pain. It is well established that pain is a description of a symptom and not considered a compensable medical diagnosis.<sup>12</sup> Dr. Woods also failed to explain how appellant's back pain was causally related to the January 3, 2013 employment incident. She merely checked a box marked "yes" that the condition was caused by the employment activity. 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>13</sup> Accordingly, Dr. Woods' opinion is insufficient to establish causal relationship.

Appellant also submitted various notes from a nurse practitioner who stated that appellant experienced back pain on January 3, 2013 when he fell to the ground after pulling on a box. The Board has held, however, that a nurse practitioner is not a physician as defined under FECA.<sup>14</sup> These reports, therefore, are of no probative medical value.<sup>15</sup>

As noted above, appellant has the burden of proof to establish that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>16</sup> As the record does not contain sufficient causal medical evidence to establish that he sustained a diagnosed back condition as a result of the January 3, 2013 employment incident, he has not met his burden of proof in this case.

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<sup>12</sup>*B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 8, 2008).

<sup>13</sup>*D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>14</sup> Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>15</sup>*E.H.*, Docket No. 08-1862 (issued July 8, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>16</sup>*Supra* note 4.

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 establish that he sustained any diagnosed condition causally related to the January 3, 2013 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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