

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

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A.G., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
San Diego, CA, Employer )

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**Docket No. 13-1574  
Issued: November 7, 2013**

*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 June 20, 2013 appellant filed a timely appeal from a May 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 a traumatic injury in the performance of duty on February 19, 2013.

**FACTUAL HISTORY**

On February 19, 2013 appellant, then a 55-year-old city carrier, filed a traumatic injury claim alleging that he sustained a low back injury that day when he was lifting a tray of flats. He

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

felt pain and stiffness in his back. Appellant notified his supervisor and stopped work on February 19, 2013.

A February 13, 2013 note documents that appellant was released to work without restrictions by Dr. L. Mercer McKinley, a treating physician.<sup>2</sup>

In a February 19, 2013 report, Dr. Robert Amster, Board-certified in emergency medicine, reported that appellant complained of back pain after moving a tray of flats. He diagnosed a muscle spasm and low back pain. In a duty status report (Form CA-17), Dr. Amster reported that appellant could not return to work until February 26, 2013. In a March 5, 2013 note, he diagnosed spasm of back, low back pain, kyphoscoliosis and scoliosis.

By letter dated March 6, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

Dr. Amster's treatment notes dated February 19 to April 9, 2013 were provided. On February 26, 2013 he stated that a lumbar x-ray revealed prominent scoliosis and moderate discogenic degenerative changes. By letter dated April 9, 2013, Dr. Amster reported that he first treated appellant for bilateral lower back pain on February 19, 2013. Appellant reported that his injury occurred after moving a tray of flats from the back of his truck to the front. Dr. Amster noted a history of scoliosis and degenerative joint disease which caused intermittent low back pain. He noted that the episode of pain sustained at work was characterized as an exacerbation of appellant's underlying back problems and was attributable to the lifting incident at work. Dr. Amster diagnosed acute lumbar strain with myospasm and opined that appellant suffered an exacerbation of underlying back pain attributed to nonindustrial scoliosis and degenerative joint disease as a result of a work lifting injury on February 19, 2013.

By decision dated May 21, 2013, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury. It found that the February 19, 2013 lifting incident occurred as alleged; however, the medical evidence was not sufficient to establish causal relation.

### **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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

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<sup>2</sup> The Board notes that appellant has previously filed three other OWCP claims, the most recent being an April 30, 2012 occupational disease claim, File No. xxxxxx911. No other information regarding appellant's prior claims is before the Board.

employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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>7</sup>

### ANALYSIS

OWCP accepted that the February 19, 2013 lifting incident occurred as alleged. It denied appellant's claim on the grounds that the medical evidence was not sufficient to support that his back condition was causally related to the February 19, 2013 employment incident. The Board finds that he did not submit sufficient medical evidence to support that he sustained a back injury causally related to the February 19, 2013 employment incident.<sup>8</sup>

In treatment notes dated February 19 to April 9, 2013, Dr. Amster diagnosed spasm of back, low back pain, kyphoscoliosis and scoliosis. He noted that a lumbar x-ray revealed prominent scoliosis and moderate discogenic degenerative changes. Dr. Amster did not provide a full or accurate history of appellant's back condition for which he previously received treatment. By letter dated April 9, 2013, he reported that he first treated appellant for bilateral lower back pain on February 19, 2013. Appellant reported that his injury occurred after moving

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<sup>3</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>5</sup> Elaine Pendleton, *supra* note 3.

<sup>6</sup> See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

<sup>7</sup> James Mack, 43 ECAB 321 (1991).

<sup>8</sup> See Robert Broome, 55 ECAB 339 (2004).

a tray of flats. Dr. Amster briefly noted a history of scoliosis and degenerative joint disease which caused intermittent low back pain. He diagnosed acute lumbar strain with myospasm and opined that appellant suffered an exacerbation of underlying back pain attributed to nonindustrial scoliosis and degenerative joint disease as a result of a lifting injury on February 19, 2013 while at work.

Dr. Amster failed to explain how lifting trays caused or aggravated appellant's low back condition. He provided a generalized opinion that the accident exacerbated appellant's back pain, attributed to nonindustrial scoliosis and degenerative joint disease. Dr. Amster recounted the incident as described by appellant but failed to provide a sufficient explanation as to the mechanism of injury. His general statement that appellant suffered an injury at work is of limited probative value.<sup>9</sup>

The Board further notes that Dr. Amster also failed to provide an adequate and detailed medical history. Dr. Amster noted a brief history of preexisting scoliosis and degenerative joint disease which caused intermittent low back pain. The Board notes that appellant has three prior OWCP claims and was released to full duty on February 13, 2013, as evidenced by Dr. McKinley's note. Dr. Amster failed to provide any other details regarding appellant's prior medical history as it pertains to present claim. Moreover, it is unclear if appellant's condition was caused or aggravated by the work incident or a result of his preexisting condition as Dr. Amster failed to provide a detailed explanation. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>10</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>11</sup> Without medical reasoning explaining how February 19, 2013 employment incident caused or contributed to his acute lumbar strain with myospasm, Dr. Amster's report is insufficient to meet appellant's burden of proof.<sup>12</sup>

While appellant established that the February 19, 2013 incident occurred as alleged; the record is without rationalized medical evidence establishing a causal relationship between the accepted February 19, 2013 employment incident and appellant's acute lumbar strain with myospasm. Thus, he has failed to establish his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

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<sup>9</sup> *S.W.*, Docket 08-2538 (issued May 21, 2009).

<sup>10</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>11</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>12</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his acute lumbar strain with myospasm was causally related to the accepted February 19, 2013 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2013  
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