

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 14-1843
Issued: December 24, 2014**

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 August 20, 2014 appellant filed a timely appeal from a February 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 OWCP properly denied continuation of pay (COP) as a result of appellant's employment injury.

On appeal, appellant asserts that he sustained a traumatic injury on March 21, 2013 as opposed to an occupational disease.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 5, 2013 appellant, then a 57-year-old clerk, filed a Form CA-1 traumatic injury claim alleging that on March 21, 2013 he sustained a hernia during the performance of his duties which required urgent surgery. On the claim form, his supervisor indicated that appellant had stated that he did not know how he got hurt.

In a March 21, 2013 return to work certificate, Dr. Robert G. Perez, a Board-certified surgeon, indicated that appellant required urgent surgery for an incarcerated right inguinal hernia.

In an April 9, 2013 letter, the employing establishment authorized COP for the period March 22 through April 18, 2013.

In an April 10, 2013 letter, appellant's supervisor, controverted appellant's COP. He indicated that on March 21, 2013, appellant requested a leave slip for a 1:00 p.m. doctor's appointment that he made prior to March 21, 2013. Appellant returned to work late the next day, with documentation that he required hernia surgery. His supervisor asked him how he got the hernia and appellant stated that he did not know. Appellant's supervisor further related that appellant did not write a statement describing how the accident occurred.

In an April 18, 2013 return to work certificate, Dr. Perez indicated that appellant underwent surgery on March 25, 2013 and was able to return to full-time work on May 13, 2013.

In a May 8, 2013 letter, OWCP advised appellant that additional factual and medical evidence was needed to establish his claim. Appellant was accorded 30 days to submit the information. No additional evidence was received.

By decision dated June 13, 2013, OWCP denied the claim on the grounds that fact of injury was not established. Specifically, appellant had not submitted a statement with regard to the cause of the injury, and the medical documentation did not discuss the connection between the hernia, and his federal employment.

On June 17, 2013 appellant requested reconsideration. In a June 2013 statement, he indicated that he had similar symptoms for a long time prior to his injury but his symptoms became severe by March 21, 2013. Appellant indicated that he was injured "due to the continuous displaying of efforts applied to heavy loads of mail along several months that he was assigned to I-II in the San Francisco Postal Distribution Center." He stated that he is a clerk and was never trained to safely perform the mail handler duties required to work in such unit. Most of the time, appellant was assigned to I-II breakdown by himself and there were no witnesses when he got injured. By March 21, 2013, his symptoms were so severe that he scheduled a doctor's appointment after he clocked in. While appellant was working doing breakdown, the hernia broke out into his scrotum. His doctor urged him to have immediate surgery.

In a March 21, 2013 report, Dr. Perez noted appellant's complaint as "right inguinal pain x 10 days. Appellant had this hernia for multiple years (three to five) and recently has noted the increase in size of the bulge." An impression of incarcerated right inguinal hernia was provided. In a June 12, 2013 report, Dr. Perez additionally reported that appellant noted a rapid increase in

the size of the bulge when he did some heavy lifting at work and also later on at home that weekend. Appellant was not sure if he hurt himself at work or if he did it at home. Dr. Perez indicated that the physical examination was consistent with a right inguinal hernia and surgery was successfully completed on March 25, 2013. He stated that appellant initially had a small hernia and probably did something, either at his work or at his home, which precipitated an acute incarceration with strangulation. A decision needed to be made urgently because of appellant's increasing pain and his problem of the incarcerated hernia. Dr. Perez, therefore, opined that appellant had an acute event which occurred within a week prior to his surgery. Copies of the hospital reports and return to work certificate were received.

The records indicated that appellant received COP in the amount of 160 hours. After receiving the denial of appellant's claim, the employing establishment requested recoupment of the COP received.

On February 24, 2014 OWCP accepted the claim for an occupational disease for the condition of inguinal hernia with obstruction, without gangrene. It modified the June 13, 2013 decision to reflect an occupational disease claim and not a traumatic injury. Appellant was advised he was not entitled to COP as COP was only available for traumatic injuries. He was instructed to file Form CA-7 for any loss of wages/leave that may have occurred.

LEGAL PRECEDENT

An employee who claims benefits under FECA has the burden to establish 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift.⁴

Section 8118 of FECA provides for payment of COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of FECA.⁵

² C.S., Docket No. 08-1585 (issued March 3, 2009).

³ S.P., 59 ECAB 184 (2007).

⁴ 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁵ 5 U.S.C. § 8118.

FECA's implementing regulations provide, in pertinent part, that to be eligible for COP, a claimant must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

OWCP accepted that appellant sustained the condition of inguinal hernia with obstruction, without gangrene. While appellant had filed a traumatic injury claim, it found that his claim was more appropriately an occupational disease. Therefore, appellant would not be entitled to COP. The Board agrees.

In his statement, appellant indicated that he had been assigned to section I-II for several months performing heavy mail breakdowns, predominately by himself. He noted that he was not as trained in such work as the mail handlers were and that there were no witnesses when he got injured. Appellant indicated that he had his condition for several years and by March 21, 2013 his symptoms were so severe that he scheduled a doctor's appointment later that day. While he was working in the breakdown, the hernia entered his scrotum. From appellant's statement, it is clear that he believes that his condition arose from the job duties he performed over more than one shift. The fact that the hernia entered his scrotum on March 21, 2013 is not indicative of the time he was injured.⁷ Additionally, in the medical history to Dr. Perez, appellant indicated that he had an increase in his symptoms for 10 days and noted the increase in size of the bulge when he did some heavy lifting at work and also later on at home that weekend. He indicated that he was not sure if he hurt himself at work or if he did it at home. While Dr. Perez opined that appellant had an acute event, either at his work or at his home, which precipitated an acute incarceration with strangulation of the hernia within a week prior to his surgery, appellant, by his own admission, had been performing heavy mail breakdowns for several months and he was not sure if he hurt himself at work or at home. Thus, the evidence does not support a single work event which caused appellant's condition but rather a series of events which precipitated his condition to the point surgery was required.⁸

⁶ 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

⁷ *See Manual Garcia*, 37 ECAB 767 (1986) (the 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).

⁸ *See supra* note 11.

The Board finds that appellant did not meet the requirements for COP as he has not established disability due to a work-related traumatic injury.⁹ The record contains no affirmative evidence that he was entitled to COP for the period March 22 through April 18, 2013. OWCP accepted the claim for an occupational disease and properly informed appellant to file Form CA-7 for any loss of wages/leave that may have occurred.

OWCP properly rescinded COP for this period in its February 24, 2014 decision.

On appeal, appellant contends that he sustained a traumatic injury, not an occupational disease. He stated that he was assigned a mail handlers job and had to perform heavy lifting without proper training. Appellant reiterated that he was lifting heavy weights when his hernia was abruptly forced to break out. Based on the findings and reasons stated above, it is clear that his condition occurred over a period of time and not a specific work incident.

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 OWCP properly rescinded approval of COP as the claim was premised on an occupational disease as opposed to a traumatic injury.

⁹ See *W.W.*, 59 ECAB 533, 536 (2008).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 24, 2014
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