

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

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<b>W.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 14-1428</b>
	)	<b>Issued: October 14, 2014</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer</b>	)	
_____	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 2, 2014 appellant filed a timely appeal from a March 21, 2014 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 an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On April 19, 2013 appellant, then a 54-year-old mail clerk, filed an occupational disease claim alleging that he developed a hernia in the performance of duty. He claimed that his injury was caused by his work-related duties of lifting up to 70 pounds and carrying up to 40 pounds. Appellant stopped work on April 23, 2013. His supervisor noted that he did not know of any

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

time where appellant had to lift 70 pounds and that there was equipment available to move heavy boxes.

In an April 30, 2014 statement, appellant stated that he began noticing his belly button growing larger within the past four years. He visited the doctor on April 10, 2013 where he was notified that he may have a hernia. On April 17, 2013 appellant was referred to a specialist who confirmed that he had a hernia and advised him that he needed surgery. He noted that he felt pain on April 6, 2013, while lifting heavy sacks and bundles and moving heavy equipment.

In a May 6, 2013 letter, OWCP notified appellant that the evidence was insufficient to support his claim. It advised him to submit a comprehensive narrative medical report from his attending physician. Appellant was further advised that medical reports should include a diagnosis, history of injury, and a physician's opinion on how employment activities caused or contributed to the diagnosed condition. Appellant did not respond.

By decision dated June 21, 2013, OWCP denied appellant's claim because he failed to submit any medical evidence containing a medical diagnosis.

On July 11, 2013 appellant's attorney requested a telephonic hearing, which took place on October 21, 2013. At the hearing, appellant testified that he had performed his duties since 1986.

Following the hearing, appellant submitted an October 30, 2013 form medical report from Dr. John Capurro, Board-certified in family medicine, who diagnosed umbilical hernia. Dr. Capurro opined that appellant's condition was "likely directly related" to work. He advised that the hernia may be due to other factors, but one of the factors was clearly the work activities described by appellant. In a November 12, 2013 medical report, Dr. Capurro advised that appellant was diagnosed with a hernia on March 3, 2013 and underwent surgery on April 22, 2013. He noted that any work restrictions should come from the surgical group that performed the operation.

By decision dated December 16, 2013, an OWCP hearing representative denied appellant's claim. The medical reports received on December 13, 2013 had not been considered in this decision. On December 30, 2013 appellant's attorney requested reconsideration and resubmitted the October 30 and November 12, 2013 reports.

By decision dated March 21, 2014, OWCP denied modification because the medical reports submitted by appellant were insufficient to establish that his umbilical hernia was causally related to the accepted work factors.

### **LEGAL PRECEDENT**

An employee seeking 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (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>4</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>5</sup> 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>6</sup>

### ANALYSIS

Appellant claimed that he developed an umbilical hernia as a result of lifting and carrying boxes and mail on the job. There is no dispute that he performed some aspect of these duties as a part of his job. However, the medical evidence is insufficient to establish that appellant's medical condition was causally related to these work activities.

In his October 30, 2013 medical report, Dr. Capurro diagnosed umbilical hernia. He stated that, while appellant's condition could be due to other factors, one of the factors that caused the condition was the work activities described by appellant. Dr. Capurro opined that appellant's condition was "likely directly related" to work. However, he failed to specify which work activities he was referring or to provide an accurate history of the injury. The Board has held that a physician's opinion on causal relationship must 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 factors of employment.<sup>7</sup> Dr. Capurro failed to indicate specific work factors which may have contributed to appellant's hernia nor did he provide any medical rationale in support of his opinion. The Board has held that the mere fact

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

that symptoms arise during a period of employment does not establish a causal relationship.<sup>8</sup> Dr. Capurro's report is of little probative value and does not discharge appellant's burden of proof. His November 12, 2013 disability status report also fails to discharge appellant's burden of proof because it included no opinion on causal relationship supported by medical rationale.

On appeal, appellant's counsel asserts that Dr. Capurro provided an unequivocal opinion on causal relationship. As explained, however, Dr. Capurro did not indicate an awareness of appellant's duties or provide any medical reasoning explaining how such duties contributed to the diagnosed medical condition.

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 an occupational disease caused by work-related events.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).