

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

---

F.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Edison, NJ, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 14-1333  
Issued: December 2, 2015**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 22, 2014 appellant, through his attorney, filed a timely appeal of a February 10, 2014 merits 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 to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a traumatic back injury due to the accepted employment incident on April 25, 2011.

On appeal counsel argued that the reports of Dr. Mark A.P. Filippone, a Board-certified physiatrist, met appellant's burden of proof or in the alternative required OWCP to undertake further development of appellant's claim.

---

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

## **FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>2</sup> The facts and circumstances of the case as set out in the prior decision are adopted herein by reference. The relevant facts follow.

On May 2, 2011 appellant, then a 57-year-old electronic maintenance technician, filed a traumatic injury claim alleging that on April 25, 2011 he bent over to unlock the lock on a mail processing machine and ruptured discs in his back. By decision dated June 7, 2011, OWCP denied appellant's claim for a traumatic injury finding that he had not submitted medical evidence based on a proper history of injury establishing that he sustained an injury due to his accepted employment incident of bending over to release a lock. Counsel requested an oral hearing, before an OWCP hearing representative.

Appellant submitted a narrative statement dated June 24, 2011 claiming that on April 25, 2011 at 3:00 p.m., he was notified that due to a shortage of maintenance mechanics he was to perform a daily maintenance route on four delivery bar code sorter machines, two of which had to be completed by 6:00 p.m. To complete this assignment, he had to remove all items from the perimeter of the machines, bring the assigned tools including the vacuum cleaner to the machines, open all locked doors and vacuum the internal components while working in a crouched or kneeling position. Appellant had completed these tasks on two machines by 6:00 p.m. and was in the process of removing the maintenance lock from the circuit breaker when he stood up and immediately felt severe pain in his lower back in the vicinity of his left kidney. While waiting for this pain to resolve he felt a numbing sensation that extended from his right knee to his right ankle and started to lose sensation in his right foot and leg.

Dr. Filippone completed a report on October 5, 2011 noting that he reviewed appellant's June 24, 2011 statement and diagnosed low back derangement with clear evidence of internal derangement of the lumbar spine and obvious evidence of cervical radiculitis. Dr. Filippone stated that the injury on April 25, 2011 was the culmination of all of appellant's back injuries and was "quite literally the straw that broke the camel's back...."

Appellant testified at the oral hearing on October 11, 2011 that his duties included cleaning postal machines. This task involved moving a tool case weighing 40 pounds as well as a separate toolbox weighing 200 pounds, a toolbar weighing 25 pounds, a rolling a vacuum cleaner weighing 20 pounds and moving the letter equipment from around and atop the machine. Appellant stated that letter equipment included carts weighing between 400 and 550 pounds which had to be pushed away from the machine. He stated that his back pain occurred after completing two of the four machines assigned to him while releasing a maintenance lock on the circuit breaker. Appellant stated that he pulled the circuit breaker and stood up. He then experienced pain in his back and a then a few minutes later numbness going down his right leg.

By decision dated November 23, 2011, an OWCP hearing representative affirmed the prior decision of June 7, 2011, finding that appellant failed to submit sufficient medical opinion evidence, based on a proper history of injury, to establish a causal relationship between appellant's diagnosed back condition and his employment incident of April 25, 2011.

---

<sup>2</sup> Docket No. 13-40 (issued May 7, 2013).

Counsel requested reconsideration on December 5, 2011. By decision dated June 27, 2012, OWCP denied modification of its prior decision finding that the medical reports did not provide a consistent mechanism of injury and are insufficient to establish that the employment injury occurred as alleged. The Board reviewed appellant's case on May 7, 2013<sup>3</sup> and found that appellant had not submitted the necessary medical opinion evidence to establish that his employment activities on April 25, 2011 resulted in his diagnosed conditions. The Board found that Dr. Filippone stated that he had reviewed appellant's history of back injuries as well as his description of employment activities on April 25, 2011. He diagnosed low back derangement and stated that appellant's current condition was a culmination of his previous back injuries. He opined that the April 25, 2011 injury was "the straw that broke the camel's back." The Board found that this report did not provide the necessary medical explanation of how appellant's work activities caused or contributed to his diagnosed condition and without some medical reasoning, this report was insufficient to meet appellant's burden of proof. The Board concluded that Dr. Filippone did not explain how or why appellant's activities would result in his diagnosed condition and affirmed the June 27, 2012 decision of OWCP.

On November 13, 2013 counsel requested reconsideration. He submitted an additional report from Dr. Filippone dated October 31, 2013 in which Dr. Filippone related that on April 25, 2011 appellant was pulled from his position of electronic technician and ordered to work as a maintenance mechanic. Appellant was told to work on two machines, each 100 feet long with 25 set of double steel doors. He was required to unlock and vacuum the interior of each machine which included reaching in with a vacuum probe wand to the top of the machine and then squatting down or kneeling to vacuum the bottom of the machine. Appellant was required to complete this task in 60 minutes rather than the normal allotted time of between 75 and 90 minutes. He also pushed a 150-pound cart, wore a 20-pound tool belt and dragged a vacuum cleaner hose. In addition, there were various items scattered in front of the machine doors weighing between 50 and 600 pounds which appellant had to move to complete his assigned task. Dr. Filippone concluded that appellant was working at an accelerated rate in a job beyond his usual physical requirements. He stated, "About 50 minutes into this literally back-breaking work, he began to feel back pain but he continued working for another hour or so, but he never made it to the two-hour break." Dr. Filippone stated, "As described there was rapid flexion/extension, rotation, squatting, stooping, reaching and twisting at a very rapid nonphysiologic pain in a condensed period of time in a condensed space in a man not adequately physically acclimatized to do this repetitive rapid task and this overloaded and herniated his lumbar spine."

By decision dated February 10, 2014, OWCP denied modification of its prior decision finding that Dr. Filippone did not explain how the mechanism of appellant's rapid flexion/extension, rotation and squatting caused lumbar herniations. It further found that Dr. Filippone had not explained how the lumbar herniations were the direct result of appellant's April 25, 2011 employment incident.

---

<sup>3</sup> *Id.*

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</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>6</sup>

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”<sup>7</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.<sup>8</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup> A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>10</sup> Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>11</sup>

## ANALYSIS

Appellant filed a notice of traumatic injury alleging that he sustained a back injury on April 25, 2011. He submitted narrative statements describing his employment duties on that date which OWCP has accepted as factual. OWCP denied his claim on the grounds that the medical evidence was not sufficiently detailed and well reasoned to establish a causal relationship

---

<sup>4</sup> 5 U.S.C. §§ 8101-1893.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(ee).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>10</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>11</sup> *A.D.*, 58 ECAB 149 (2006).

between his diagnosed conditions and his accepted employment incident. Appellant requested reconsideration and submitted an additional report from Dr. Filippone addressing his alleged employment-related condition. In his October 31, 2013 report, Dr. Filippone provided a detailed description of appellant's employment duties on April 25, 2011.

The Board finds that this report is not based on an accurate history of injury and therefore lacks probative value. While Dr. Filippone provided a detailed description of appellant's employment duties, his report contradicted appellant's statements that he had no back pain until completing two machines around 6:00 p.m. Dr. Filippone described a gradual onset of back pain 50 minutes into appellant's assigned tasks. This description does not comport with appellant's statements of sudden pain. As Dr. Filippone's report is not factually accurate, it cannot constitute the weight of the medical evidence and meet appellant's burden of proof in establishing his traumatic injury claim. The Board finds that the factual deficits in Dr. Filippone's report are such that his report does not require further development by OWCP as argued on appeal.

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 the medical evidence is not based on a proper factual background and due to these deficits cannot establish appellant's traumatic injury claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.<sup>12</sup>

Issued: December 2, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

---

<sup>12</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.