

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

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**W.G., Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Jersey City, NJ, Employer**

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**Docket No. 15-302  
Issued: March 25, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Deputy Chief Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 21, 2014 appellant, through counsel, filed a timely appeal from an August 26, 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 has established an injury in the performance of duty on July 3, 2007.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>2</sup> As the Board noted appellant, a 55-year-old mail handler, had filed a traumatic injury claim (Form CA-1) alleging that he sustained

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

<sup>2</sup> Docket No. 13-2084 (issued April 25, 2014).

an injury while lifting and pulling letter trays on July 3, 2007. OWCP initially denied the claim by decision dated September 7, 2007, finding that the factual and medical evidence was insufficient to establish the claim.

On September 17, 2007 appellant submitted a September 4, 2007 report from Dr. Marc Fillipone, a Board-certified physiatrist, who provided a history and results on examination. Dr. Fillipone diagnosed lumbosacral radiculitis, cervical radiculitis and internal derangement of the right shoulder. He opined that appellant's conditions were the result of "repetitive stress while working for the [employing establishment]."

On December 3, 2007 appellant submitted an October 26, 2007 report from Dr. Fillipone, who again provided a history of July 3, 2007 incident and reviewed the medical history. Dr. Fillipone stated that appellant continued to have complaints of low back pain and provided results on examination. He diagnosed cervical radiculopathy and lumbar radiculitis. Dr. Fillipone opined that the above conditions were "directly and solely the result of the injuries sustained by the patient on [July 3, 2007] while working for the [employing establishment]."

In a decision dated June 17, 2013, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

By decision dated April 25, 2014, the Board remanded the case to OWCP. The Board noted that OWCP had not reviewed the October 26, 2007 report from Dr. Fillipone. The case was remanded to OWCP for proper review of the evidence of record and an appropriate decision.

In a decision dated August 26, 2014, OWCP denied the claim for compensation. It found that the medical evidence, including the October 26, 2007 report from Dr. Fillipone, was not sufficient to establish appellant's claim.

### **LEGAL PRECEDENT**

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."<sup>3</sup> The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."<sup>4</sup> An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>5</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. The second component is whether the employment incident

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>5</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

caused a personal injury, and generally this can be established only by rationalized medical evidence.<sup>6</sup>

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

In the present case, OWCP accepted that appellant was lifting and pulling letter trays on July 3, 2007. The issue was whether the medical evidence was sufficient to establish causal relationship between a diagnosed condition and the employment factors. In the prior decision, the Board noted that in the September 4, 2007 report, Dr. Phillipone referred generally to repetitive stress activities and did not explain how the particular activities appellant stated that he performed on July 3, 2007 would have caused the diagnosed conditions.

In the October 26, 2007 report, Dr. Phillipone diagnosed cervical radiculopathy and lumbar radiculitis. He opined that the diagnoses were "directly and solely the result of injuries sustained" by appellant on July 3, 2007 while working at the employing establishment. However, Dr. Phillipone provides no medical rationale to support the opinion. A rationalized medical opinion, as noted above, provides a clear explanation as to how the employment factors caused the specific diagnosed conditions. Dr. Phillipone provides a medical history, but does not provide sound medical reasoning to explain why he believes the diagnosed conditions were directly and solely caused by the employment factors on July 3, 2007. The reports from Dr. Phillipone do not provide a rationalized medical opinion, based on a complete background, establishing causal relationship between a diagnosed condition and the July 3, 2007 employment activity.

The Board accordingly finds that appellant did not meet his burden of proof in this case. On appeal, appellant's representative argues that the medical evidence from Dr. Phillipone is sufficient to establish the claim. For the reasons noted, the Board finds the medical evidence is of diminished probative value on the issue presented.

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.

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<sup>6</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

**CONCLUSION**

The Board finds that appellant has not established an injury in the performance of duty on July 3, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 26, 2014 is affirmed.

Issued: March 25, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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