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

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| **DAVID D. CLAYTON, Appellant** | ) | |
| **and** | ) | **Docket No. 05-195** |
| | ) | **Issued: June 1, 2005** |
| **U.S. POSTAL SERVICE, AIR PARK POST OFFICE, Scottsdale, AZ, Employer** | ) | |

*Appearances:*
*David D. Clayton, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On October 25, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 29, 2004, finding that he had not sustained an injury causally related to his federal employment. Pursuant to 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 sustained an injury causally related to his federal employment.

### ***FACTUAL HISTORY***

On June 28, 2004 appellant, then a 54-year-old carrier, filed an occupational disease claim alleging that he sustained lower back pain on his left side as a result of manually lifting a truck platform about 10 to 12 times daily. He first became aware of the condition and the fact that it was caused or aggravated by his employment on July 31, 2003. In a statement accompanying his claim, appellant noted that he has been a carrier doing collection duties since

August 2001 and, prior to June 2003, he drove a truck with a fully automatic lift, but that on June 16, 2003 he started driving a new truck with a semi-automatic lift. He noted that this lift required him to physically lift the platform, which weighed at least 80 pounds, an average of 12 to 15 times a day. Appellant indicated that on or about July 10, 2003 he began having pain in the left side of his lower back. In support of his claim, appellant submitted a return to work slip dated February 24, 2004, indicating that he had been treated for vertigo and that he could not drive, but otherwise had no restrictions.

The employing establishment controverted the claim. In a letter dated June 30, 2004, it indicated that appellant has been on sick leave since February 25, 2004 due to vertigo and told his supervisor on June 29, 2004 that his doctor would not release him to return to work. In a letter dated July 2, 2004, the employing establishment stated that he did not lift an 80-pound platform as the platform is on an axis which swings into a locked position. The employing establishment noted that appellant called in sick on February 10, 2004 due to back pain but indicated that it was not work related. The employing establishment contended that he had not provided an accurate job description, history of injury or explanation of activities outside the workplace to establish that his back condition was work related. By letter dated July 9, 2004, the employing establishment informed the Office that appellant requested retirement effective August 3, 2004. The employing establishment also submitted a letter dated July 12, 2004 from an injury compensation specialist who indicated that appellant had been on an off-duty status since February 2004 for vertigo. She also noted that he retired effective August 3, 2004.

By letter dated July 14, 2004, the Office requested that appellant submit further information.

Appellant submitted an undated statement received by the Office on August 17, 2004 describing, in detail, how the lift platform on his truck worked. He noted that the lift platform was raised by pushing a button but that he had to use his left hand and arm to lower and raise the lift platform. Appellant noted that, while he was still holding the lift platform, he placed an S-hook attached to a chain in the hole at the locked position to keep the platform from falling. On August 20, 2004 he indicated that he began exercise therapy on June 30, 2004 and that he noticed improvement in about two weeks. Appellant continued the therapy until July 20, 2004 and, that at this point, experienced no further back pain.

In a June 15, 2004 medical report, Dr. Christopher Huston, a Board-certified physiatrist with a subspecialty in pain medicine, indicated that appellant reported the onset of left-sided back pain on July 15, 2003 which appeared while he was at work. He informed Dr. Huston that, as part of his employment, he had to "lift up and down the tailgate of a large truck." Dr. Huston concluded that appellant had "chronic mechanical low back pain which is most likely emanating from left sacroiliac joint syndrome versus pain emanating from left L4-5, L5-S1 zygapophyseal joints; less likely would be a discogenic source of pain." He started appellant on physical therapy. On July 20, 2004 Dr. Huston indicated that he had no back pain, lower extremity weakness, paresthesias or radiating pains. He concluded that appellant had a complete resolution of mechanical low back pain after participating in physical therapy.

By decision dated September 29, 2004, the Office denied appellant's claim, finding that the evidence was not sufficient to establish fact of injury. The Office noted that the evidence did

not establish that appellant was exposed to the employment factor described in his claim and that no medical evidence was provided which offers a diagnosis or opinion on causal relationship.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the Act, that an injury was sustained 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]

In an occupational disease claim, the claimant must submit: (1) medical evidence establishing the existence of the disease or condition on which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3]

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged or if the evidence establishes that the specific event or incident, to which the employee attributes the injury was not in the performance of duty. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.[4]

## ***ANALYSIS***

The Board finds that appellant has not submitted sufficient evidence to establish that he sustained an injury causally related to his federal employment. He has not established that the employment incident occurred, as alleged. Appellant indicated on his claim form that he first became aware of his back condition on July 31, 2003. However, the first medical evidence he submitted was a return to work report dated February 24, 2004 vertigo, not his back pain. The first medical report of record that discussed appellant's back pain was Dr. Huston's June 30, 2004 report, written 11 months after appellant filed his claim. Appellant alleged that he injured himself as a result of moving an 80-pound platform an average of 12 to 15 times a day. However, the employing establishment contested his allegation, indicating that the platform was on an axis which swung into a locked position. The employing establishment submitted evidence that appellant stopped work in February 2004, due to his nonemployment-related vertigo. The Board finds that these inconsistencies, including appellant's delay in filing his

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Constance G. Patterson*, 41 ECAB 206 (1989).

claim, the fact that there is no medical evidence indicating that he saw a physician until 11 months after he alleged sustaining a low back condition, the evidence indicating that appellant stopped work due to vertigo and the fact that the employing establishment indicated that he did not have to lift the platform, cast serious doubt on whether the incident occurred as appellant alleged.[5]

Moreover, the medical evidence fails to establish that appellant sustained a condition causally related to his federal employment. The return to work form is not relevant as it addressed his condition of vertigo. Dr. Huston did not see appellant until 11 months after the low back pain allegedly commenced. His opinion noted that appellant had to "lift up and down the tailgate of a large truck." However, as noted, the employing establishment did not agree with this characterization of appellant's job duties. Furthermore, his account of the incident indicated that the lift platform was raised by pushing a button and that he had to use his left hand to lower and raise the platform. There is nothing in Dr. Huston's report to indicate that appellant had mechanical assistance in lifting the platform. He did not clearly link appellant's low back pain to his federal employment, but merely discussed appellant's allegations in his history portion of the medical report. Appellant failed to submit sufficient medical evidence in support of his claim.[6] Consequently, the Board concludes that he has failed to meet his burden of proof to establish fact of injury.

## ***CONCLUSION***

The Board finds that appellant has failed to establish that he sustained an injury causally related to his federal employment.

[5] *See Michael W. Hicks*, 50 ECAB 325 (1999).

[6] *Gloria J. McPherson*, 51 ECAB 441 (2000).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 29, 2004 is hereby affirmed.

Issued: June 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member