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

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| **PATRICIA L. MORGAN, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1659** |
| | ) | **Issued: November 10, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer** | ) | |

*Appearances:*
*Patricia L. Morgan, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

### ***JURISDICTION***

On August 8, 2005 appellant filed a timely appeal from the March 25, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim that she sustained an injury in the performance of duty on March 5, 2004.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of her claim.

### ***ISSUE***

The issue is whether appellant sustained an injury in the performance of duty on March 5, 2004.

[1] Appellant indicated that the date of the decision was July 28, 2005, but no such decision appears in the case record. Following a hearing representative's decision on March 25, 2005 she requested reconsideration on May 2, 2005. On May 26, 2005 the Office wrote Senator Carl Levin to advise that a senior claims examiner would thoroughly review all the evidence submitted. Appellant then completed an appeal request form on August 1, 2005 requesting an appeal to this Board.

## ***FACTUAL HISTORY***

On April 12, 2004 appellant, then a 44-year-old full-time mail processing clerk, filed a claim alleging that her lumbar strain and chronic neck and back pain were a result of the duties she performed on March 5, 2004:

> "This was my first night of work since February 6, 2004 denial of temporary light[-]duty request. I told Harrison Standoval mail was too heavy for me. Based on January 9, 2003, postal fitness duty I was fit for full duty although at present in time physical therapy for lumbar strain. Weight of mail and moving equipment aggravated lower back area."[2]

She stopped work on March 6, 2004 and did not return. On March 22, 2004 Dr. Larry L. Benson, a family practitioner, diagnosed chronic lower back pain and reported that appellant could return to work that day with restrictions.

On May 4, 2004 the Office asked appellant to submit additional information to support her claim, including a specific description of what she lifted, carried, pushed or pulled and their estimate weights. The Office also asked her to submit additional medical evidence:

> "Provide a comprehensive medical report from your treating physician which describes your symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the doctor's opinion, with medical reason, on the cause of your condition. Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided."

In a decision dated July 2, 2004, the Office denied appellant's claim. The Office found that factual aspects of the claim were established but that she had submitted no medical evidence establishing that she sustained a medical condition from the accepted events. The Office explained that pain was not a diagnosis, it was a symptom and for that reason found that there was essentially no medical evidence in the file diagnosing a medical condition. The Office noted that the only substantial medical evidence submitted was a January 7, 2004 report from an orthopedic surgeon who diagnosed a functionally normal musculoskeletal system and who found no disability for work.

Appellant requested an oral hearing before an Office hearing representative. She submitted documents relating to her complaint of discrimination based on physical disability arising from a denial of temporary light duty beginning February 6, 2004 and continuing. Appellant submitted documents relating to previous claims. She also submitted additional medical evidence, including an April 22, 2004 report from Dr. Denise M. White-Perkins, Board-certified in family medicine. She related appellant's history of neck and lower back pain from

[2] Appellant filed a Form CA-2, Notice of Occupational Disease and Claim for Compensation, but she explained at a January 20, 2005 hearing before an Office hearing representative that it was the duties she performed on the night of March 5, 2004 that aggravated her back.

1994, when she was in a motor vehicle accident, to March 5, 2004, when she returned to full duty. Dr. White-Perkins continued:

> "[Appellant] presented to my office on March 9, 2004 for follow-up of chronic back pain. The patient reported that she did return to work and was on light duty until March 5, 2004 and then advanced to 8 hours full duty. [Appellant] still had significant back pain in her lower back and was advised by supervisor to request permanent light duties since that was too difficult for her. She described constant lower back pain regardless of position. [Appellant] stated that, when she is at work, the pain radiates into her legs, when she is pulling or lifting mail that is up to 30 pounds or more, this also makes it worse, standing makes the pain somewhat better. She stated that she can sit only for a maximum of two hours. Paperwork was completed for her requesting permanent light duty and she was referred to Athletic Medicine physicians for further evaluation. [Appellant] was discharged from [p]hysical [t]herapy on March 9, 2004 having completed a full course with only slight improvement in pain and range of motion. The patient was given a return to work note for March 22, 2004 with the following restrictions:
>
> > No lifting in excess of 15 [pounds]
> > No repetitive squatting, bending or lifting.
> > Seated position with appropriate back support.
>
> "This restriction was effective until April 3, 2004 and further evaluation. They have again been renewed until May 12, 2004 pending [magnetic resonances imaging] (MRI) [scan] and Athletic Medicine evaluation.
>
> "Although [appellant's] initial complaint of back and neck pain began after a motor vehicle accident, it is apparent from the above review of her medical course that her duties at the [employing establishment] continue to exacerbate her condition causing acute flares."

An MRI scan of the lumbar spine obtained on June 15, 2004 showed minimal facet degenerative change, but was otherwise reported to be a normal examination.

At the hearing, which was held on January 20, 2005, appellant explained that the duties she performed on the night of March 5, 2004 aggravated her existing back condition. The hearing representative suggested that it might be to her advantage if Dr. White-Perkins submitted a report indicating that she is aware of the duties appellant performed and indicating that these duties have caused her to develop a back or neck problem. She replied that such a report was already in the file.

In a decision dated March 25, 2005, the Office hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that appellant had submitted absolutely no medical evidence supporting that her work duties of March 5, 2004 or that her work duties over a period of time, contributed to her current back condition.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[4]

Causal relationship is a medical issue[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

## ***ANALYSIS***

The Office accepts that the factual aspects of the case are established. By this, the Office means that there is no dispute about the duties appellant performed on the night of March 5, 2004, when she returned to full duty. She testified at the January 20, 2005 hearing that, as a mail processor, she processed mail on a machine, pushed equipment, lifted trays of mail and pushed U-carts, all purpose containers (APC) weighing 200 pounds without mail and steels weighing 400 pounds without mail. The employing establishment reported on June 2, 2004 that appellant returned to duty for eight hours on March 5, 2004 to a newly awarded bid on Tour One as a mail processing clerk:

> "[Appellant] was working on the 833 Operation for the OCR [a]utomated [e]quipment which has one level of (60) stackers. The APC and [s]teels of mail to process are brought over by the [c]lerks who weigh the mail in and stage in front of designated machines. The tray lines are several steps from the stackers. Full trays of mail usually weigh from 15 to 30 pounds depending on the type of mail and [m]ail [p]rocessors are not required to twist their torso to operate automated

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

equipment. [Appellant] has not returned to duty since March 5, 2004 and has grieved the denials for temporary light duty."

As the Office has found that the work-related events are established by the factual evidence, the Board finds that appellant has met her burden of proof to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination, therefore, is whether her duties as a mail processing clerk on the night of March 5, 2004 caused or aggravated a diagnosed medical condition.

The Board does not agree with the hearing representative's finding that appellant submitted absolutely no medical evidence supporting that her work duties on March 5, 2004 or that her work duties over a period of time, contributed to her current back condition. Dr. White-Perkins' April 22, 2004 report generally supports appellant's claim. She reported that, when appellant returned to full duty on March 5, 2004 she still had significant pain in her lower back, which she described as constant regardless of position. Dr. White-Perkins related her complaint that pain radiated into her legs when she was at work and that this was made worse by pulling and lifting mail up to 30 pounds or more. Standing reportedly made the pain somewhat better and appellant stated that she could sit for a maximum of two hours. So Dr. White-Perkins was generally aware of the kinds of physical activities to which she attributed her low back condition: pulling and lifting mail up to 30 pounds or more and sitting for a maximum of two hours. Her opinion would carry more weight if she described more specifically the physical requirements of appellant's position as a mail processing clerk, reviewing perhaps an official position description or the employing establishment's June 2, 2004 account of appellant's duties on March 5, 2004.

More of a problem is that Dr. White-Perkins offered no diagnosis in her April 22, 2004 report. She stated that appellant was under her care for chronic neck and lower back pain, but as the Office previously explained, pain is a symptom of a medical condition, not a diagnosis of one. An examination on February 6, 2004 revealed paraspinal muscle tenderness and limited range of motion, but Dr. White-Perkins did not state what medical condition manifested these findings. She stated that a lumbar x-ray on February 13, 2004 showed no acute injury or subluxation and she noted that an MRI scan was pending. An MRI scan obtained on June 15, 2004 was reported to show minimal facet degenerative change but was otherwise normal. So it is not clear what diagnosed medical condition Dr. White-Perkins intended to relate to appellant's duties on March 5, 2004, whether it was the minimal facet degenerative change noted on June 15, 2004 or something that would account for pain radiating into her legs or some kind of soft-tissue muscle condition.

Besides the lack of detail concerning the duties appellant performed that night and the lack of a firmly diagnosed medical condition, Dr. White-Perkins offered no medical reasoning to support her conclusion that appellant's duties at the employing establishment continued to exacerbate her condition, causing acute flares. She simply noted that this was "apparent" from her review of appellant's medical course. Dr. White-Perkins did not explain how this was apparent from a medical standpoint. Without some medical rationale explaining how specific physical activities on March 5, 2004 exacerbated a specific medical condition, her opinion is of little probative or evidentiary value. Without medical reasoning to support her conclusion, it appears Dr. White-Perkins relied solely on appellant's complaints, effectively allowing her to

self-certify an employment-related injury. The Board has held that a medical opinion unsupported by medical rationale is of little probative value.[9]

While Dr. White-Perkins' April 22, 2004 report generally supports appellant's claim, the Board finds that its deficiencies are such that it fails to establish the critical element of causal relationship. This is the best evidence appellant has to support her claim of an injury on March 5, 2004. Evidence relating to previous injuries or previous medical restrictions or previous treatment is immaterial to whether the events of March 5, 2004 caused an injury by aggravating or exacerbating her back condition. The Board will affirm the Office's March 25, 2005 decision affirming the denial of her claim for compensation.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish that appellant sustained an injury in the performance of duty on March 5, 2004. She has met her burden to establish as factual the duties she performed that night, but appellant has submitted insufficient medical opinion evidence to establish that these specific duties aggravated or exacerbated a firmly diagnosed medical condition.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the March 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

[9] *See Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).