

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MALCOLM W. MARSHALL and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Miami, FL

*Docket No. 03-1632; Submitted on the Record;
Issued September 4, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an injury in the performance of duty.

Appellant, then a 40-year-old supply technician, filed a claim for traumatic injury alleging that on October 23, 2001, while in the performance of duty, he sustained a back injury when he lifted a basket of mail out of a mail gurney. In a statement dated July 18, 2002, appellant noted that, at the time of the incident, he felt a sudden jerk as his back brace popped open and at the same time there was a popping sound from his back. He explained that he did not realize the extent of his injury until two days later, when his pain had increased to the point where he was not able to bend over. Appellant stated that he then went to the employee's health unit where the employee's health nurse, Julia Napper Williams, gave him muscle relaxants and referred him to physical therapy. When the pain did not decrease, he sought additional medical attention. Appellant stopped work on October 25, 2001 and returned to light duty on November 1, 2001. He continued to be off work for intermittent periods until his resignation from the employing establishment on August 20, 2002.

In support of his claim, appellant submitted numerous treatment notes dating from October 25, 2001 through May 23, 2002 from physical therapists, Nurse Williams, Dr. Miguel A. Tabaro, Dr. James D. Guest, Dr. Selwyn Carrington and Dr. Anabelle Maldonado. In addition, a November 6, 2001 electromyography report notes normal results, but a magnetic resonance imaging (MRI) scan, dated November 8, 2001, revealed disc desiccation at L3-4, L4-5 and L5-S1, as well as a large herniated disc at L5-S1 abutting and possibly compressing the nerve roots at S1.

By letter dated August 12, 2002, the Office of Workers' Compensation Programs informed appellant that the evidence of record was insufficient to establish his claim because it did not contain, among other things, a physician's opinion as to how his employment injury resulted in his diagnosed condition.

In a decision dated September 17, 2002, the Office denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish fact of injury.

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the claim was timely filed within the applicable time limitation period 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 These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether an 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 or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁵ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or a specific condition for which compensation is claimed is causally related to the injury.⁶

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸ In this case, the incident of October 23, 2001 has not been contested.

¹ 5 U.S.C. §§ 8101-8193.

² *Caroline Thomas*, 51 ECAB 451 (2000).

³ *Id.*; see also *Calvin E. King*, 51 ECAB 394 (2000).

⁴ See *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ See *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ See *John J. Carlone*, *supra* note 4.

The only medical report which addresses the causal relationship between appellant's diagnosed herniated disc and his employment incident is a March 15, 2002 report from Dr. Guest, appellant's attending neurological surgeon, which states:

“[Appellant] does have an acute radiculopathy history that began after lifting a mail basket/flat in October 2001.⁹ His MRI shows a large herniated disc at L5-S1 and chronic degenerative disease of the vertebral bodies at this level, as well as dark discs at L3-4 and L4-5. In my opinion, the disc most likely extruded due to the lifting but the chronic degenerative changes are not from this incident.”

The Board finds that Dr. Guest's opinion is of insufficient probative value to support appellant's claim for an employment-related back injury, in that Dr. Guest's opinion that appellant's herniated disc was “most likely” caused by the lifting incident is speculative and further does not fully explain how the lifting incident caused or aggravated the injury. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal.¹⁰ In addition, medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.¹¹

The record also contains numerous treatment notes from Dr. Selwyn Carrington, a Board-certified internist, Dr. Miguel A. Tabaro, a Board-certified physiatrist, and Dr. Anabelle Maldonado, a Board-certified neurologist. While Drs. Carrington, Tabaro and Maldonado each noted the history of injury provided by appellant, that he suffered back pain following a lifting incident at work, none provided an opinion as to the causal relationship, if any, between appellant's diagnosed back conditions and the described lifting incident. The Board has held that the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹² As Drs. Carrington, Tabaro and Maldonado did not address the crucial issue of causal relationship, their reports are of little probative value.¹³

Finally, the record contains numerous treatment notes from Nurse Williams, a nurse practitioner, and Doris Ruiz, a physical therapist. However, neither a nurse nor a physical

⁹ In an earlier report dated February 5, 2002, Dr. Guest provided a more detailed history of the incident, noting that appellant reported that his symptoms dated from October 23, 2001 and developed into severe bilateral back pain within 48 hours of a work-related exposure. In this prior report, however, other than addressing the history of the injury as provided by appellant, Dr. Guest does not provide a medical opinion as to the cause of appellant's diagnosed back condition.

¹⁰ *Vaheh Mokhtarians*, 51 ECAB 190 (1999); *Judith J. Montage*, 48 ECAB 292 (1997).

¹¹ *Id.*

¹² *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹³ *Id.*; *See Penelope A. Reed*, 38 ECAB 488 (1986).

therapist is a “physician” under the Act and thus they cannot render medical opinions on the causal relationship between a given physical condition and implicated factors.¹⁴

By letter dated August 12, 2002, the Office informed appellant that the above evidence was insufficient to establish his claim and explained the type of evidence required. As he failed to submit any medical evidence which contains a rationalized medical opinion explaining how the October 23, 2001 incident caused or contributed to his diagnosed herniated disc, the Office properly denied his claim.¹⁵

The decision of the Office of Workers’ Compensation Programs dated September 17, 2002 is hereby affirmed.

Dated, Washington, DC
September 4, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Vickey C. Randall*, 51 ECAB 357 (2000); *Vicky L. Hannis*, 48 ECAB 538 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

¹⁵ *Caroline Thomas*, *supra* note 2; *Carolyn F. Allen*, 47 ECAB 240 (1995).