

official, indicated that on March 7, 2007 at approximately 1:30 pm, during an altercation with an alien, appellant sustained injuries to his left shoulder, left arm and lower back.

By letter dated March 14, 2007, the Office requested that appellant submit medical information in support of his claim. Appellant submitted emergency department records from Catholic Health System dated March 7, 2007. These records reflect a history that appellant, a law enforcement officer, was in a scuffle with a suspect and received injuries to his low back, left shoulder and left arm. An x-ray taken on that date was interpreted by Dr. Mary L. Turkiewicz, a Board-certified radiologist, as “unremarkable lumbar spine.” A physician’s assistant or nurse practitioner completed a form indicating that the primary diagnosis was right shoulder rotator cuff strain and multiple contusions as a result of an altercation. Appellant was discharged on the same date.

By decision dated April 17, 2007, the Office denied appellant’s claim. The Office accepted that the claim incident occurred, but determined there was no medical evidence providing a diagnosis that could be connected to the incident.

LEGAL PRECEDENT

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 an 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. 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.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to a specific condition of employment.⁵ Neither the fact that a

¹ 5 U.S.C. § 8122(a).

² *Id.*

³ *John J. Carlone*, 41 ECAB 345 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Katherine J. Friday*, 47 ECAB 591 (1996).

condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.

ANALYSIS

It is not disputed that appellant was involved in an altercation as part of his federal employment on March 7, 2007. Accordingly, appellant established that the incident of March 7, 2007 occurred at the time, place and in the manner alleged. The issue, however, is whether appellant sustained an injury causally related to the accepted employment incident.

Appellant has not submitted sufficient medical evidence to establish that he sustained an injury causally related to his federal employment. He submitted the records from his emergency room visit of March 7, 2007. A nurse practitioner or physician's assistant completed a form indicating that the primary diagnosis was right shoulder rotator cuff strain and multiple contusions as a result of an altercation. However, this report was not signed by a physician. Registered nurses, licensed practical nurses and physicians' assistants are not physicians as defined under the Act and their opinions are of no probative value.⁶ Consequently, this report does not constitute competent medical evidence. The only physician's report of record is the x-ray report by Dr. Turkiewicz, which was interpreted as an unremarkable lumbar spine. Dr. Turkiewicz gave no opinion with regard to whether appellant sustained an injury causally related to the accepted work-related altercation. Accordingly, as appellant has not submitted medical evidence establishing that the accepted employment incident resulted in a personal injury, appellant has failed to establish his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on March 7, 2007, as alleged.

⁶ See 5 U.S.C. § 8101(2) which provides: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law." See also *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2007 is affirmed.

Issued: December 28, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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