

This case has previously been before the Board. In a November 30, 2006 decision, the Board affirmed the Office's September 12, 2005 merit decision, finding that appellant failed to establish that his current back condition and resultant disability were causally related to his

accepted September 15, 1959 employment-related injuries. It also affirmed a November 16, 2005 nonmerit decision denying his request for a review of the written record.<sup>1</sup> The Board found that appellant failed to submit rationalized medical evidence establishing a causal relationship between his claimed condition and disability and his accepted employment injuries. The Board found that appellant was neither entitled to a hearing nor a review of the written record as a matter of right since his claim involved an injury sustained prior to the enactment of the 1966 amendments to the Federal Employees' Compensation Act. The Board also found that the Office properly denied appellant a discretionary hearing on the grounds that the issue could equally well be addressed on reconsideration. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup> The facts and the history relevant to the present issue are hereafter set forth.

By letter dated December 23, 2006, appellant requested reconsideration before the Office. He contended that the decision contained an error in finding that his claimed back condition and resultant disability were not causally related to his accepted employment-related injuries. Appellant's reconsideration request was accompanied by duplicate copies of treatment notes dated September 16 and 17, 1959 and medical reports dated September 15 and 16, 1959 from an employing establishment physician which found that appellant sustained a contusion and abrasion of the back and listed his physical limitations. He also submitted a history of his service with the employing establishment and a report of injury regarding his September 15, 1959 employment injuries.

By decision dated April 2, 2007, the Office denied appellant's request for modification, finding that his arguments were without merit. The Office further found that he failed to submit sufficient medical evidence establishing that his continuing residuals and disability were causally related to the September 15, 1959 employment-related injuries.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact 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.<sup>4</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>5</sup>

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's

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<sup>1</sup> Docket No. 06-1652 (issued November 30, 2006).

<sup>2</sup> On June 12, 2005 appellant, then a 67-year-old boilermaker, filed a claim for an occupational disease that was ultimately treated by the Office as a traumatic injury claim. On September 15, 1959 appellant sustained a back injury when a sailor dropped a valve from 10 feet above onto his back.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup> The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between his current back condition and resultant disability and his September 15, 1959 employment-related injuries. The issue in this case is medical in nature.

In support of his December 23, 2006 reconsideration request, appellant submitted duplicate copies of treatment notes dated September 16 and 17, 1959, medical reports dated September 15 and 16, 1959 from an employing establishment physician, which found that appellant sustained a contusion and abrasion of the back and listed his physical limitations. The Board notes that this evidence was previously of record and considered by the Office. The Board finds that it fails to address whether appellant's current back condition and disability are causally related to his September 15, 1959 employment-related injuries. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup>

Appellant submitted the history of his service with the employing establishment and a report of injury regarding his September 15, 1959 employment injuries. The Board, however, finds that the submission of this factual evidence does not establish appellant's claim because it is not relevant to the issue in this case, which is medical in nature.

Appellant has failed to submit rationalized medical evidence establishing that his current back condition and disability are causally related to his September 15, 1959 employment-related back contusion and abrasion. The Board finds that he has not met his burden of proof.

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<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

<sup>10</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

**CONCLUSION**

The Board finds that appellant has failed to submit the necessary medical evidence establishing that his current back condition and resultant disability are causally related to his accepted September 15, 1959 employment-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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