



On April 23, 2007 the Office requested additional evidence, including medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to the March 31, 2007 work incident.

A March 20, 2006 magnetic resonance imaging (MRI) scan report noted that appellant had developed back and bilateral leg pain a few weeks earlier when she lifted heavy boxes of books. She had bi-level disc protrusions in her lumbar spine. A December 6, 2006 x-ray report indicated mild degenerative changes in appellant's lumbar spine. A March 21, 2007 disability certificate indicated that she was able to return to regular work on March 22, 2007.

Notes from the employing establishment medical clinic dated February to April 2007 indicated that appellant sustained a low back strain on March 31, 2007. It is not clear whether a physician signed the notes.

On May 3, 2007 Dr. Karen Barnes, an employing establishment physician, requested authorization for physical therapy for appellant's back condition. No cause was given for the condition. In notes dated May 15, 2007, Dr. Barnes indicated that appellant could return to work without restrictions.

Appellant submitted notes from a nurse and a physical therapist.

By decision dated June 1, 2007, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a back injury on March 31, 2007 while in the performance of duty.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must 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 she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must

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<sup>1</sup> Appellant submitted additional evidence subsequent to the Office decision of June 1, 2007. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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>6</sup>

### ANALYSIS

The Board finds that the medical evidence is insufficient to establish that appellant sustained a back injury on March 31, 2007 while in the performance of duty.

The x-ray and MRI scan reports of record are related to an incident at work in 2006 when appellant developed back pain while lifting books. They are of no probative value on the issue of whether she sustained a back injury on March 31, 2007 when she assisted a patient in his chair. The March 21, 2007 disability certificate also precedes the claimed March 31, 2007 date of injury and is therefore of no probative value regarding her claim for a March 31, 2007 back injury.

The medical clinic notes dated February to April 2007 indicated that appellant sustained a low back strain on March 31, 2007. There is no rationalized medical opinion given on the cause of the back strain. Additionally, it is not clear whether a physician signed the notes. For these reasons, these notes are insufficient to establish that appellant sustained a back injury on March 31, 2007 when she lifted a patient.

On May 3, 2007 Dr. Barnes requested physical therapy authorization for appellant's back condition. On May 15, 2007 she indicated that appellant could return to work without restrictions. Dr. Barnes did not provide any medical rationale explaining how appellant's back condition was causally related to the March 31, 2007 lifting incident. Therefore, her reports are not sufficient to establish that appellant sustained a back injury on March 31, 2007 while in the performance of duty.

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<sup>5</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 5.

Appellant submitted notes from a nurse and a physical therapist. However, a nurse and a physical therapist do not qualify as physicians under the Act.<sup>7</sup> Registered nurses, licensed practical nurses, physician's assistants and physical therapists are not physicians as defined under the Act and their opinions are of no probative value.<sup>8</sup> Consequently, these notes are not sufficient to establish that appellant sustained a work-related back injury on March 31, 2007

There is no medical evidence containing a complete and accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant's back condition was causally related to the March 31, 2007 lifting incident at work. Therefore, the Office properly denied appellant's claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a back injury on March 31, 2007 while in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 1, 2007 is affirmed.

Issued: February 21, 2008  
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

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<sup>7</sup> 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); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

<sup>8</sup> *Id.*