

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE F. SIMMONS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Durham, NC

*Docket No. 00-484; Submitted on the Record;
Issued January 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an employment-related injury on March 3, 1999.

On March 3, 1999 appellant, then a 48-year-old secretary, filed a traumatic injury claim alleging that on that day she sustained a lower back injury when the elevator that she was riding in "fell" several floors and stopped abruptly. In support of her claim, appellant submitted a March 3, 1999 treatment note from an employing establishment nurse and a treatment note from a physician's assistant, also dated March 3, 1999.¹

On March 22, 1999 the Office of Workers' Compensation Programs requested further information from appellant, including a medical report from her physician showing the physician's opinion as to the relationship between appellant's diagnosed condition and the incident of March 3, 1999. In response, appellant submitted further reports from a physician's assistant² and physical therapy records. Appellant also submitted a written response dated April 16, 1999, in which she stated that she sustained a prior neck and low back injury on August 28, 1998 at work when a chair at her desk slipped out underneath her, causing her to fall to the floor.

¹ The employing establishment nurse, Steve Nix, described the history of the injury and that the elevator was going down and stopped abruptly and that appellant complained of pain in the mid lumbar area. He also noted that appellant had a history of low back problems and had started taking medication the week prior to the incident due to a flare-up of back pain. That same day, appellant sought treatment at Kaiser Permanente, where Adona Struve, a physician's assistant, diagnosed acute radicular back pain. One week later, appellant was prescribed nonsteroidal physical therapy and a magnetic resonance imaging (MRI) of the lumbosacral spine area.

² In reports dated March 3 and 10, 1999, Ms. Struve diagnosed radicular low back pain. In an April 8, 1999 report, she noted an exacerbation of the pain.

By decision dated April 27, 1999, the Office denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that, while the incident of March 3, 1999 was established, appellant did not submit medical evidence to support that her injury was caused or triggered by employment factors. The Office noted that the only medical diagnosis was radicular low back pain and findings of pain and discomfort alone are insufficient to establish fact of injury. The Office also found that the evidence submitted by appellant was signed by a physician's assistant and not by a physician as required by the Federal Employees' Compensation Act.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related injury on March 3, 1999.

An employee seeking benefits under the Act³ has the burden of establishing the essential elements of his or her claim⁴ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁵ that the claim was timely filed within the applicable time limitation period of the Act,⁶ 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.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized 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.¹⁰ Moreover, the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.115.

⁵ See *James A. Lynch*, 32 ECAB 2116 (1980); see also 5 U.S.C. § 8101(1).

⁶ 5 U.S.C. § 8122.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Delores C. Ellyett*, 41 ECAB 922 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Victor J. Woodhams*, *supra* note 8; *Charles E. Burke*, 47 ECAB 185 (1995); *Thomas L. Hogan*, 47 ECAB 323 (1996); *Kurt R. Ellis*, 47 ECAB 505 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996); *Joe L. Wilkerson*, 47 ECAB 604 (1996).

condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

In support of her claim, appellant submitted notes from both a nurse and a physician's assistant. Section 8102(2) of the Act, however, defines physicians as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practices as defined by State law.¹² Neither a physician's assistant¹³ nor a nurse¹⁴ are considered a physician within the meaning of the Act. Their reports are, therefore, of no probative value. Thus, as appellant has not submitted competent medical evidence, she has not met her burden of proof to establish that she sustained an injury due to the claimed accident of March 3, 1999.¹⁵

The decision of the Office of Workers' Compensation Programs dated April 27, 1999 is hereby affirmed.

Dated, Washington, DC
January 24, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1995); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

¹² 5 U.S.C. § 8102(2).

¹³ *Clebert Simmon*, 51 ECAB ____ (Docket 99-482, issued April 24, 2000); *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979).

¹⁴ *Diane Williams*, 47 ECAB 613 (1996).

¹⁵ The Board notes that appellant submitted additional evidence to the Office subsequent to the April 27, 1999 decision and with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).