

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT G. LAWLER and DEPARTMENT OF THE INTERIOR,
FISH & WILDLIFE SERVICE, Humptulips, WA

*Docket No. 03-869; Submitted on the Record;
Issued May 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

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

On February 19, 2002 appellant, then a 52-year-old maintenance worker, filed a claim alleging that on February 15, 2002 he sustained head, neck and right shoulder injury when his head hit the rear window and then bounced forward while in an employing establishment truck that was rear-ended by another truck as he was stopped at a stop sign. Appellant did not stop work following the accident.

By letter dated May 22, 2002, the Office of Workers' Compensation Programs requested further information, including factual evidence to establish whether or not appellant was in the performance of duty at the time of the accident and medical evidence to establish that an injury had been sustained.

In support of his claim, appellant submitted several pages of a police report regarding the accident. He also completed the questionnaire indicating that he was on duty in uniform in a government vehicle en route to Aberdeen to purchase items pertinent to government business at the time of the accident.

Additionally submitted was a February 19, 2002 medical report from Dr. Michael E. Cagan, a Board-certified radiologist, who obtained right shoulder x-rays, diagnosed "normal shoulder," and noted that they demonstrated "Old post[-]traumatic deformity and secondary osteoarthritic change is present but the right clavicle is otherwise unremarkable and no acute abnormality is demonstrated in relation to the recent injury."

By decision dated June 27, 2002, the Office rejected appellant's claim finding that, although the Office accepted that appellant was involved in the accident as alleged, he had failed to submit sufficient evidence to establish that he sustained an injury as a result. The Office

found that Dr. Cagan's report did not identify any objective evidence of an accident-related injury.

The Board finds that appellant has failed to establish 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 a federal 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, generally only in the form of rationalized medical evidence, to establish that the employment incident caused a personal injury.⁵

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury.

The Board has frequently explained that an appellant's belief that a specific employment incident caused identifiable personal injury, without supporting medical evidence, is insufficient to establish his injury claim.⁶ Causal relationship is a medical issue and the medical evidence

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁴ *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 *See Linda S. Jackson*, 49 ECAB 486 (1998); *Earl David Seal*, 49 ECAB 152 (1997).

required to establish a causal relationship is rationalized medical evidence.⁷ Appellant has submitted no such rationalized medical evidence in this case.

The only medical evidence submitted to the record was the February 19, 2002 report from Dr. Cagan which diagnosed a normal shoulder and noted that no acute abnormality in relation to the recent accident was demonstrated. This report, therefore, does not support that appellant sustained an injury. As no other probative medical evidence has been submitted by appellant, he has failed to establish that the February 15, 2002 accident caused a personal injury.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 27, 2002 is hereby affirmed.

Dated, Washington, DC
May 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Elizabeth Stanislav*, 49 ECAB 540 (1998). Rationalized medical opinion 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. Such an 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 appellant. See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).