

By letter dated June 19, 2003, the Office advised appellant that he needed to submit additional evidence in support of his claim, including a rationalized opinion from a physician explaining how his diagnosed medical conditions were causally related to the May 28, 2003 employment incident.

Appellant submitted radiology reports dated May 29, 2003. He also submitted a June 10, 2003 note from Dr. Michael P. Gruber, his attending Board-certified orthopedic surgeon, authorizing physical therapy for a cervical and lumbar strain.

On July 22, 2003 the Office received a June 10, 2003 report from Dr. Gruber.

By decision dated July 22, 2003, the Office denied appellant's claim for an injury on May 28, 2003 on the grounds that he failed to provide medical evidence relating appellant's cervical and lumbar strain to the May 28, 2003 employment incident.

LEGAL PRECEDENT

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 he actually experienced the employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.² An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability and/or condition relate to the employment incident.

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he 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.³

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Shirley A. Temple*, 48 ECAB 404 (1997).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 3.

ANALYSIS

In *William A. Couch*,⁴ the Board remanded the case because the Office, in issuing a decision dated July 17, 1989, failed to consider new evidence that it received on July 13, 1989. The Board stated:

“The Federal Employees’ Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board’s jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.”

In this case, the Office received Dr. Gruber’s June 10, 1993 report on July 22, 2003, the same day that it issued its decision rejecting appellant’s claim. Although this presents a slightly different picture from that presented in *Couch*, wherein the Office received evidence several days before its final decision, the Board finds that the principle of *Couch* applies with equal force.⁵ Because Dr. Gruber’s June 10, 2003 report was received but not reviewed by the Office in rejecting appellant’s claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant’s entitlement to compensation.

CONCLUSION

The Board finds that this case must be remanded to the Office for consideration of all the evidence submitted by appellant in support of his claim to be followed by a *de novo* decision.

⁴ 41 ECAB 548 (1990).

⁵ See *Linda Johnson*, 45 ECAB 439 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2003 is set aside and the case remanded for further action consistent with this decision.

Issued: February 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member