United States Department of Labor
Employees' Compensation Appeals Board

DWIGHT A. FOSSETT, Appellant	)	
and	)	**Docket No. 05-1751**
	)	**Issued: December 1, 2005**
DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS & TECHNOLOGY, Gaithersburg, MD, Employer	)	

Appearances:
Dwight A. Fossett, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On August 22, 2005 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated June 1 and August 1, 2005, which denied modification of an August 16, 2002 decision denying appellant's claim on the grounds that he failed to establish a medical condition causally related to the accepted December 29, 2004 employment incident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on December 29, 2004 as alleged.

FACTUAL HISTORY

On December 29, 2004 appellant, a 44-year-old pipe-fitter, filed a traumatic injury claim alleging that on that date he cut his nose and jarred his neck when a "wrench blip struck nose on duct 7 jard (sic) neck."

On March 15, 2005 the Office received a February 8, 2005 treatment note, undated office visit notes and February 8, 2005 disability certificates by Dr. John T. Stinson, a treating Board certified orthopedic surgeon and treatment notes by Patricia W. Stone, a physical therapist.

Dr. Stinson noted, in the undated office visit notes, that he first saw appellant on January 21, 2005. Dr. Stinson reported that appellant injured himself when a wrench he was working with slipped and appellant "struck his head and hyperextended his neck." A physical examination revealed "restricted extension and rotation of the cervical spine," negative Lhermitte's test, a mildly positive Spurling's test, 5/5 test grade for motor groups and "some shoulder discomfort with thumb down abduction." An x-ray interpretation revealed "spondylosis and some narrowing at C5-6 and C6-7." In concluding, Dr. Stinson opined that appellant had radicular syndrome and cervical spondylosis.

In his February 8, 2005 report, Dr. Stinson noted that appellant "tried to return to work, but has had axial neck pain and shoulder radiation especially with overhead activity." A physical examination revealed restricted rotation and extension.

In treatment notes undated and dated January 25, 2005, Ms. Stone noted a date of injury as December 29, 2004 and diagnosed cervicalgia. In the January 25, 2005 note, she reported that appellant injured himself when a wrench slipped and appellant jerked his neck backward while at work. An x-ray interpretation reported a "poss. bulging disc." In a February 2, 2005 note, Ms. Stone diagnosed lumbar discectomy and noted that appellant was "being seen for cervical involvement."

On March 25, 2005 the Office received a January 10, 2005 x-ray interpretation which diagnosed "degenerative disc disease and osteophyte formation causing foraminal encroachment at C5-C7."

In a letter dated April 20, 2005, the Office informed appellant that the information was insufficient to establish his claim and requested a medical report containing a definitive diagnosis and rationalized medical opinion regarding causation.

On May 9, 2005 the Office received additional evidence including a February 3, 2005 treatment note by Ms. Stone and office notes dated March 8 and April 15, 2005 by Dr. Stinson. Ms. Stone diagnosed cervicalgia and noted that appellant stated that he was "under a lot of stress" and his "neck hurts. My l[eft] side of my neck hurts."

In a March 8, 2005 note, Dr. Stinson reported that appellant continued "to have neck pain and some shoulder girdle radiation." He noted that appellant had "some restriction of rotation to the right" and normal strength, sensation and reflexes. Dr. Stinson reported "a very well[-]defined trigger area supermedial to the right scapula" in his April 15, 2005 notes. He noted that appellant continued to have "residual tenderness in the parascapular spine."

In a decision dated June 1, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his condition was due to the accepted December 29, 2004 event.

Appellant requested reconsideration and submitted a June 16, 2005 statement by appellant, a December 29, 2004 report by a nurse[1] and treatment notes dated April 29 and June 8, 2005 by Dr. Stinson. In the December 29, 2004 report, the nurse noted the history of the injury and diagnosed a superficial laceration of the nose and "pain upon r[ange] o[f] m[otion] in" appellant's right upper back, shoulder and neck. In the April 29, 2005 treatment notes, Dr. Stinson noted that appellant had lumbar pain and that appellant had a back injury in October. Dr. Stinson in his treatment notes dated June 8, 2005, stated that appellant had a "recurrence of pain medial to the right scapula." A physical examination revealed "negative foraminal compression tests," negative Yergason's test, active and passive range of motion of the shoulder was full and "a knot of myofascial irritation medial to the superior border of the scapula."

In a decision dated August 1, 2005, the Office denied his request for modification.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing that 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 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

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 she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.[4] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 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

---

[1] The name is unclear from the signature.

[2] *Derrick C. Miller*, 54 ECAB ___ (Docket No. 02-140, issued December 23, 2002).

[3] *John J. Carlone,* 41 ECAB 354 (1989).

[4] *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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.[5]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. 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 diagnosed condition and the implicated employment factors.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty[8] 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.[9]

ANALYSIS

In this case, the Office accepted that appellant was a federal employee who timely filed his claim for compensation benefits. The Office further accepted that the February 1, 2004 employment incident occurred at the time, place and in the manner alleged. The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish causal relationship between the diagnosed condition and the employment incident, appellant must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[10]

The Board finds that appellant has not established that the December 29, 2004 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[11] In support of his claim, appellant submitted a December 29, 2004 report by a nurse and a various reports by Ms. Stone, the physical therapist. Neither a physical therapist, nor a nurse is defined as a "physician" under the Act and, therefore, is not competent to give a medical opinion.[12]

In support of his claim, appellant submitted various office notes and reports by Dr. Stinson. In office notes dated February 8, March 8 and April 29, 2005, Dr. Stinson reported

---

[5] *Id.; see Tomas Martinez*, 54 ECAB ___ (Docket No. 03-396, issued June 16, 2003).

[6] *Conard Hightower*, 54 ECAB ___ (Docket No. 02-1568, issued September 9, 2003).

[7] *Tomas Martinez*, *supra* note 5.

[8] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

[9] *Judy C. Rogers*, 54 ECAB ___ (Docket No. 03-565, issued July 9, 2003).

[10] *James Mack*, 43 ECAB 321 (1991).

[11] *Lois E. Culver* (*Clair L. Culver*), 53 ECAB 412 (2002).

[12] 5 U.S.C. § 8101(5 U.S.C. § 8101(2) which defines "physician" as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Sheila A. Johnson*, 46 ECAB 323 (1994); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 1989); and *Jane A. White*, 34 ECAB 515 (1983).

treating appellant for neck and shoulder pain. In an undated note which the Office received on March 15, 2005, Dr. Stinson noted a history of the injury and diagnosed radicular syndrome and cervical spondylosis. In his June 8, 2005 report, he related that appellant had a "recurrence of pain medial to the right scapula." Dr. Stinson, however, did not provide a definite diagnosis or a finding regarding causal relationship between appellant and the December 29, 2004. These reports are insufficient to establish that appellant sustained an injury causally related to the December 29, 2004 employment incident. Dr. Stinson provides no opinion as to the cause of appellant's condition. The undated report is the only report containing a diagnosis and history of the injury. However, Dr. Stinson provided no opinion explaining how the diagnosed condition of radicular syndrome and cervical spondylosis were caused or aggravated by the December 29, 2004 employment incident. The opinion of a physician supporting causal relationship must be supported by affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[13]

As appellant has not submitted rationalized evidence to support his allegation that he sustained an injury on December 29, 2004, he has not met his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained a injury on December 29, 2004 in the performance of duty.

[13] *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 1 and June 1, 2005 are affirmed.

Issued: December 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board