



started to needle gun the deck. Appellant stopped work on September 25, 2006 and was released to light duty on October 18, 2006.

In a September 29, 2006 report, Dr. Diwakar Nagula, an osteopath, noted that appellant's April 2005 low back injury had resolved and that he sustained a new injury on September 25, 2006 when he took a step down while carrying a heavy tool bag on his right shoulder. He provided an impression of low back pain and suspected lumbar herniated nucleus pulposus. Dr. Nagula recommended a magnetic resonance imaging (MRI) scan and that appellant remain off work until further notice.

On October 17, 2006 the Office advised appellant that the evidence received was insufficient to establish that he sustained an injury on September 25, 2006 and that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. Appellant was asked to submit a medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that he submit the additional evidence within 30 days.

In response, appellant submitted a September 27, 2006 Form CA-16 authorization for examination and/or treatment in which the employing establishment authorized Southeast Spine and Rehabilitation to treat appellant for up to 60 days; a September 25, 2006 mishap report; a September 27, 2006 mishap memorandum from the employing establishment; and an October 17, 2006 MRI scan report.<sup>1</sup> In an October 18, 2006 workers' compensation update from Southeast Spine & Rehabilitation, a left herniated nucleus pulposus at level L4-5 was diagnosed. Appellant was advised that he could return to work with restrictions.

By decision dated November 28, 2006, the Office denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim. By decision dated December 12, 2006, the Office denied authorization of continuation of pay.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of proof to establish the essential elements of his 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

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<sup>1</sup> The MRI scan report noted moderate degenerative disc disease changes at L4-5 with broad-based bulging with mild central and left-sided protrusion, mild stenosis at the L4-5 level and small facet effusions.

<sup>2</sup> On appeal, appellant submitted new medical evidence. However, the Board has no jurisdiction to review evidence that was not before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c); *George A. Rodriguez*, 57 ECAB \_\_\_ (Docket No. 05-490, issued November 18, 2005).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.<sup>4</sup> When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>5</sup>

The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.<sup>6</sup> 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 established incident or factor of employment.<sup>7</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>10</sup> Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. The Board therefore finds that the evidence supports that the employment incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the September 25, 2006 employment

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<sup>4</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>5</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

<sup>6</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>10</sup> *Id.*

<sup>11</sup> 20 C.F.R. § 10.303(a).

incident caused an injury. Appellant has not submitted sufficient, probative medical evidence to establish that the September 25, 2006 employment incident caused a personal injury and resultant disability.

The only medical documents appellant submitted were Dr. Nagula's September 29, 2006 report and an October 17, 2006 MRI scan report.<sup>12</sup> Dr. Nagula diagnosed low back pain and suspected a lumbar herniated nucleus pulposus. He opined that appellant was totally disabled. However, Dr. Nagula did not provide a definite diagnosis as to the cause of appellant's back pain or provide a rationalized statement explaining how the employment incident caused or contributed to appellant's low back condition. Dr. Nagula's report is insufficient to establish appellant's claim.

While the October 17, 2006 MRI scan report contained findings, the diagnostic report does not address how appellant's low back symptoms were caused or aggravated by factors of appellant's employment. Without an opinion on causal relation, the MRI scan report is insufficient to establish appellant's claim of injury.

There is insufficient probative, rationalized evidence in the record that appellant's lower back injury was work related. The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains how the work incident of September 25, 2006 caused or contributed to his low back injury. Accordingly, he did not establish that he sustained a low back injury in the performance of duty. The Office properly denied appellant's claim for compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8118(a)<sup>13</sup> of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>14</sup> The regulations implementing the Act provide that an employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury.<sup>15</sup>

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<sup>12</sup> While the October 18, 2006 workers' compensation note from Southeast Spine & Rehabilitation diagnosed left herniated nucleus pulposus, there is no indication that this report was signed by a physician. To constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician. See *Vickey C. Randall*, 51 ECAB 357 (2000).

<sup>13</sup> 5 U.S.C. § 8118(a).

<sup>14</sup> Section 8122(a)(2) provides that written notice of injury was given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of a traumatic injury. 5 U.S.C. § 8119(a), (c), 8122(a)(2).

<sup>15</sup> 20 C.F.R. § 10.205(a)(1).

## **ANALYSIS -- ISSUE 2**

To establish entitlement to continuation of pay,<sup>16</sup> appellant must sustain a traumatic injury. In the present case, appellant failed to meet his burden of proof in establishing that he sustained a lower back injury in the performance of duty on September 25, 2006. As appellant did not sustain a traumatic injury, he is not entitled to continuation of pay.

The Board notes that appellant is still entitled to reimbursement for payment of expenses incurred for medical treatment for up to 60 days beginning September 27, 2006, the date the employing establishment official issued the Form CA-16, authorization for examination. By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on September 27, 2006, appellant was authorized to review medical care for a period of up to 60 days at the Southeast Spine and Rehabilitation. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment regardless of the action taken on the claim.<sup>17</sup>

## **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a lower back injury in the performance of duty on September 25, 2006. The Office properly denied his request for continuation of pay.

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<sup>16</sup> Continuation of pay is different from compensation for disability. See *William E. Ostertag*, 33 ECAB 1925, 1935-36 (1982). Continuation of pay, for the purposes of section 8118(a) of the Act, is the employee's "pay," while "compensation" is the money allowance or other benefit paid to an employee for a work-related disability under the Employees' Compensation Fund.

<sup>17</sup> *Kimberly Kelly*, 51 ECAB 582 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 12 and November 28, 2006 are affirmed.

Issued: July 23, 2007  
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