

In an undated statement, Supervisor Iris Bell reported that appellant informed her at 8:12 a.m. on August 6, 2007 that his back “went out.” She noted that “[appellant] did not state at any time that it was from lifting anything.” Ms. Bell further indicated that, when asked “what was wrong,” appellant stated, “It’s my back.” When asked if he had sustained a new injury, he responded, “No this is from my previous back injury.”

Appellant submitted duty status reports for the period June 4 through September 25, 2007 from Dr. Daniel A. Breitenbach, a treating physician. All reports contained a diagnosis of lumbar myofascitis, reflected July 25, 1996 as the date of injury, and contained the notation, “Same Injury, No Change.” On June 4, 2007 Dr. Breitenbach stated that appellant was “excused medically” from May 31 to June 6, 2007. On June 7, 2007 he released appellant to return to work with restrictions. On August 14, 2007 Dr. Breitenbach stated that appellant could return to work on August 24, 2007 with restrictions, which included lifting no more than 10 pounds, six hours per day, carrying mail for no more than three hours per day and casing mail for no more than one hour per day. On August 17, 2007 he opined that appellant could return to work on August 20, 2007, modifying his recommended restrictions to include carrying for no more than 2 hours per day and casing for no more than 45 minutes per day. In reports dated September 11 and 14, 2007, Dr. Breitenbach advised appellant not to resume working. On September 25, 2007 he stated that appellant was able to return to work with restrictions, which included casing for no more than one hour per day and carrying mail for no more than three hours per day.

In a letter dated November 13, 2007, the Office informed appellant that the information submitted was insufficient to establish his claim and allowed him 30 days to submit additional information, including a detailed account of the alleged injury and a physician’s report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted an October 10, 2007 report from Dr. Breitenbach, reflecting that he had treated appellant on July 27, 2007 for complaints of back pain, which measured “7 out of 10.” Dr. Breitenbach stated that appellant “had a palpable muscle spasm of his back, which was a result of his aggravating his back the previous day.” He indicated that appellant returned to his office on August 6, 2007 with significant pain due to a palpable spasm over the lumbar area of his back. Dr. Breitenbach’s examination of appellant at that time revealed an inability to flex forward more than 10 degrees or to extend to minus 10 degrees. He had pain with straight leg raising of 20 degrees bilaterally. Dr. Breitenbach stated that appellant was “excused due to his lumbar strain with aggravation on July 26 and 30 and August 6 to 18[, 2007].”

On November 21, 2007 the employing establishment controverted the claim, contending that the incident was not reported within 30 days, as required. The establishment also argued that the evidence was insufficient to establish a causal relationship between appellant’s claimed condition and the alleged events of August 6, 2007.

By decision dated December 17, 2007, the Office denied appellant’s claim. Although it accepted that the work event occurred as alleged, the Office found that the medical evidence did not contain a diagnosis that could be connected to the accepted event and, therefore, was insufficient to establish that appellant had sustained an injury under the Federal Employees’ Compensation Act on August 6, 2007.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, arising out of and in the course of employment.²

An employee seeking benefits under the Act 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

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.⁵ An award of compensation may not be based on appellant’s belief of causal relationship.⁶ 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.⁷

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established

¹ 5 U.S.C. § 8102(a).

² This construction makes the statute effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

³ *Robert Broome*, 55 ECAB 339 (2004).

⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). 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).

⁵ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Id.*

incident or factor of employment. The opinion 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.⁸

ANALYSIS

The Office accepted that appellant was a federal employee; that he timely filed his claim for compensation benefits and that the August 6, 2007 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated appellant's claimed condition. Therefore, appellant has failed to satisfy his burden of proof.

Medical evidence of record consists of duty status reports for the period June 4 through September 25, 2007, and a narrative report dated October 10, 2007 from appellant's treating physician, Dr. Breitenbach. None of these reports constitute probative medical evidence.

Dr. Breitenbach's duty status reports do not support appellant's claim that he sustained a traumatic injury on August 6, 2007. On the contrary, they reflect that the date of injury was July 25, 1996. The notations appearing on each report, "Same Injury, No Change," indicate that appellant's current condition is related to the 1996 injury, rather than to a new injury. Moreover, although Dr. Breitenbach provided a diagnosis of lumbar myofascitis, he did not render an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁹ The Board notes that, as the June 2007 reports predate the August 6, 2007 incident, they are not relevant to the issue of causal relationship.

Dr. Breitenbach's October 10, 2007 report is also insufficient to establish a causal relationship between appellant's diagnosed condition and the accepted August 6, 2007 employment incident. He stated that he treated appellant on July 27, 2007 for a palpable muscle spasm of his back, which was allegedly a result of his aggravating his back the previous day. Dr. Breitenbach stated that appellant returned to his office on August 6, 2007 with significant pain due to a palpable spasm over the lumbar area of his back. Therefore, the information provided indicates that appellant's back condition was somehow aggravated on July 26, 2007, and that he was still experiencing pain on August 6, 2007. Although Dr. Breitenbach provided examination findings, he failed to offer an opinion on whether there was a causal relationship between appellant's diagnosed condition and the established incident. Therefore, this report is of limited probative value.

The record does not contain an opinion by Dr. Breitenbach, or by any other qualified physician, supporting appellant's contention that his back condition was causally related to the accepted employment activity. While appellant has submitted medical documents which track

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Michael E. Smith*, 50 ECAB 313 (1999).

his treatment, he has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between his condition and the established August 6, 2007 work incident.

Appellant expressed his belief that his back condition resulted from the August 6, 2007 employment incident. The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹¹ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed back condition was caused or aggravated by the accepted employment incident, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment on August 6, 2007.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 6, 2007.

¹⁰ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board