

By letter dated November 20, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence including, a rationalized medical report from an attending physician which described appellant's symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in her federal employment contributed to her condition.

In an undated narrative statement, appellant further described her injury. The Panama backpack tree marking gun she wore contained two gallons of paint. Appellant stated that it also weighed 17 pounds empty and 34 pounds filled. After informing a foreman that she fell while carrying the backpack, appellant was allowed to carry a Nelson hand tree marking gun. Appellant was later informed by her supervisor and foreman that no other options were available and, thus, she had to carry the Panama backpack. She carried one and one-half gallons of paint in it. On September 14, 2007 appellant experienced constant back pain. Following an examination by a physician on September 19, 2007, she was assigned nonweight-bearing work duties. Appellant also attributed her back condition to work duties which involved repetitive bending, squatting and leaning through dense areas of brush, vines and/or brambles. She stated that she had worked as a forester for 20 years and never experienced any back pains or problems until she worked in her current position and used the backpack tree marking gun. Appellant submitted a description of her forester technician position.

In a November 15, 2007 statement, Jason Doolittle, appellant's coworker, related that on September 11, 2007 appellant informed a marking foreman that her days of carrying a Panama gun were coming to an end based on her physician's diagnosis of a deteriorating vertebral disc. He stated that she wondered how long she would be able to continue carrying a Panama gun even though she did not experience any problems at that time.

In a November 12, 2007 report, Anne Smith, a nurse practitioner, stated that appellant was evaluated for a back injury she sustained as a result of wearing a paint pack. She related that she was not qualified to answer specific questions concerning appellant's condition. Ms. Smith referred her to an orthopedic surgeon for further evaluation and treatment.

A November 8, 2007 magnetic resonance imaging lumbar spine scan report of Dr. Rodney H. Hobbs, a Board-certified radiologist, stated that appellant sustained a synovial cyst involving the right facet at L3-4. Dr. Hobbs stated that there was no central canal or neural foraminal narrowing.

An unsigned supervisor's statement indicated that timber marking represented one of the major aspects of a forestry technician's duties. It required the use of either a handheld marking gun or a backpack model. The Panama cylindrical backpack tree marking gun weighed 12.75 pounds empty rather than 26 pounds as alleged by appellant. In addition to the backpack gun, an employee normally carried two gallons of paint which weighed approximately 8.75 pounds per gallon. Appellant could not carry two gallons so she was asked to carry only one gallon. She carried the Panama backpack periodically from June 20 through September 17, 2007. During this time appellant also performed many other tasks such as, office and "GPS" work and she underwent therapy for her right arm twice a week.

Statements dated June 11 and September 10 through 13, 2007 of Brent Thompson, an employing establishment supervisor, indicated that appellant underwent rehabilitation for her arms and that her elbows and fingers became inflamed as a result of using marking guns. In a November 8, 2007 statement, Mr. Thompson related that on September 11, 2007 appellant advised him that a physician treating her tendinitis reviewed an MRI scan which demonstrated a deteriorating vertebrae disc. The physician informed her that her days of carrying a Panama gun were nearing an end due to the potential harm to her back. Mr. Thompson stated that, following his conversation with appellant, she carried a gun containing one gallon of paint because two gallons of paint was too heavy.

In an October 3, 2007 statement, Jim C. Segar, an employing establishment supervisor, related that appellant believed holding a data recorder caused pain in her arms and that performing "GPS" work caused pain in her back. He advised her to stop performing "GPS" work. Appellant responded that her pain was not bad and that she wished to continue performing the "GPS" work. In an October 24, 2007 statement, Mr. Segar related that appellant informed him that she could probably resume marking timber since she no longer had any restrictions but she wished to talk to her physician about her back because it still bothered her. In an undated statement, he related that appellant explained that she was unable to mark trees on September 17, 2007 due to back pain but, that she currently felt better and that she would be fine provided that she did not carry more than one gallon of paint.

By decision dated December 21, 2007, the Office denied appellant's claim. It found that the factual evidence failed to establish the employment factors she alleged. The Office further found that the medical evidence failed to establish that appellant sustained a back injury causally related to factors of her employment.

An October 17, 2007 report from a physician whose signature is illegible stated that appellant sustained epicondylitis of the right elbow and low back pain.

In a November 27, 2007 report, Dr. J. Allan Goodrich, an attending Board-certified orthopedic surgeon, reviewed a history that appellant sustained a back injury in May 2007 which became symptomatically worse in September 2007. He stated that she had no associated radicular component and her pain was constant. Appellant denied any bowel or bladder symptoms, fever, chills or weight loss. Dr. Goodrich reviewed an MRI scan that demonstrated a cyst at L3-4 which was off the facet joint on the right that extended posteriorly and not into the canal. He related that this was more indicative of a degenerative process. Dr. Goodrich suspected that appellant sustained an acute low back strain with superimposed underlying ongoing degenerative disease which would improve in time with conservative care.

On January 11, 2008 appellant requested an oral hearing before an Office hearing representative. On March 13, 2008 the Office advised her that a telephonic hearing would be held due to her geographical location, the issue involved in the case, and the number of hearing requests in her area.

Following an April 15, 2008 telephonic hearing,¹ appellant submitted Dr. Goodrich's June 9, 2008 report. Dr. Goodrich stated that she fell at work in May 2007 while wearing a backpack and that her back pain symptoms peaked in September 2007. On clinical examination, he found no motor deficits, intact sensation to touch and full range of motion of both hips. Dr. Goodrich reiterated his prior diagnosis of a facet joint cyst at L3-4. He opined that this condition had very little to do with appellant wearing a backpack or with her sole on-the-job injury. Dr. Goodrich also reiterated his prior opinion that her condition involved a generalized degenerative process.

By decision dated July 9, 2008, an Office hearing representative affirmed the December 21, 2007 decision. She found that appellant submitted sufficient evidence to establish her work duties. However, the Office hearing representative found that appellant failed to submit rationalized medical evidence establishing that she sustained a back injury causally related to the established employment-related duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

¹ During the April 15, 2008 hearing, appellant testified that she was terminated by the employing establishment effective December 6, 2007.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

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.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.⁶

ANALYSIS

The Office hearing representative accepted that appellant performed the work duties of a forestry technician as alleged. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed back condition was caused or aggravated by her work-related duties.

The November 12, 2007 report of Ms. Smith, a nurse practitioner, has no probative value in establishing appellant's claim. A nurse practitioner is not a "physician" as defined under the Act.⁷

An October 17, 2007 report from a physician whose signature is illegible stated that appellant sustained epicondylitis of the right elbow and low back pain. An unsigned report has no probative medical value as the author cannot be identified as a physician.⁸ The Board finds that the October 17, 2007 report fails to establish appellant's claim.

Dr. Goodrich's November 27, 2007 and June 9, 2008 reports reviewed a history that appellant sustained a back injury in May 2007 while wearing a backpack and that her symptoms became worse in September 2007. He reported his normal findings on clinical examination which included no motor deficits, intact sensation to touch and full range of motion of both hips. Dr. Goodrich diagnosed a cyst at L3-4 that was off the facet joint on the right that extended posteriorly based on an MRI scan. He opined that appellant sustained a low back strain with superimposed underlying ongoing degenerative disease. In the June 9, 2008 report, Dr. Goodrich stated that appellant's back condition had very little to do with wearing a backpack or with her sole on-the-job injury. Appellant's own attending physician opined that her back condition was not caused or aggravated by the accepted employment duties. Therefore, the Board finds that Dr. Goodrich's reports are insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back condition that was causally related to the accepted factors of her federal employment as a forestry technician. Appellant did not meet her burden of proof.

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

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

⁷ *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2008 and December 21, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2009
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