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<b>G.A., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 09-1208</b>
	)	<b>Issued: December 7, 2009</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, Oklahoma City, OK, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On March 3, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 19, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established an injury causally related to factors of his federal employment as a food service worker.

On October 31, 2008 appellant, then a 52-year-old food service worker, filed an occupational disease claim (Form CA-2) stating that his back hurt from bending, pushing and pulling carts. The Office sent the employing establishment a November 12, 2008 letter requesting information about appellant's employment activities. In response the employing establishment submitted a December 8, 2008 letter with a description of appellant's employment activities and their frequency. The employing establishment also submitted a position description.

By decision dated December 19, 2008, the Office denied the claim for compensation. It found the evidence was insufficient to establish an incident as alleged.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>4</sup> 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 must be based on a complete factual and medical background of the claimant.<sup>5</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>6</sup>

### **ANALYSIS**

In the December 19, 2008 decision, the Office indicated that it had sent appellant a November 12, 2008 letter regarding his claim. The record indicates only that the Office sent the employing establishment a November 12, 2008 letter. As to the factual evidence, appellant identified bending, as well as pushing and pulling carts. The employing establishment provided additional evidence regarding his work activities, which included bending, pushing and pulling. There is no evidence refuting appellant's allegation that he engaged in bending, pushing and pulling as part of his federal job duties.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>3</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>4</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> *Id.*

Appellant's burden of proof to establish his claim, however, also includes the submission of rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors. The only decision on appeal is the December 19, 2008 decision,<sup>7</sup> and the Board can review only evidence that was before the Office at the time of its final decision.<sup>8</sup> The record did not contain any medical evidence and, therefore, appellant did not meet his burden of proof in this case.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 19, 2008 is modified to reflect that the evidence establishes the identified job duties and is affirmed as modified.

Issued: December 7, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> On appeal, appellant referred to a February 4, 2009 decision. The record contains a letter dated February 4, 2009 advising appellant that he had requested two different appeal rights and he must clarify which appeal right he was exercising. This letter is not a final decision with appeal rights. See 20 C.F.R. § 10.126.

<sup>8</sup> 20 C.F.R. § 501.2(c).