



The Office received a March 6, 2008 disability certificate from David Keller, a physician's assistant, who advised that appellant could return to work. Mr. Keller indicated that appellant should utilize a finger splint.

In a letter dated March 18, 2008, the Office advised appellant that his claim was originally received as a simple uncontroverted case, which resulted in minimal or no time lost from work. It requested additional medical evidence. Appellant was requested to provide a report from his physician, which included a history of injury and a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment and an opinion on the relationship of the diagnosed condition to the claimed injury. The Office explained that the physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information. No additional evidence was received within 30 days.

By decision dated April 23, 2008, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. It determined that the claimed event occurred; however, there was no medical evidence that provided a diagnosis which could be connected to the event.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or 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<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> 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.<sup>6</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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

specific employment incident or to specific conditions of employment.<sup>7</sup> 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 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.<sup>8</sup>

An award of compensation may not be based on appellant's belief of causal relationship. 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>9</sup>

Office procedures provide that a case may be accepted without a medical report when the condition reported is a minor one which can be identified on visual inspection by a lay person; the injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and no time was lost from work due to disability.<sup>10</sup>

### ANALYSIS

Appellant alleged that he sustained an injury to his right hand and right index finger while "opening hearts" in the performance of duty on February 25, 2008. There is no dispute that appellant cut his right hand and right index finger while performing his duties as a food inspector. The Board finds that the claimed incident occurred as alleged.

However, appellant has not submitted any medical evidence to establish that the February 25, 2008 employment incident caused or aggravated a specific diagnosed medical condition to his right hand or index finger. On March 18, 2008 the Office advised him of the medical evidence needed to establish his claim and allowed him 30 days to submit such evidence.

Appellant submitted a March 6, 2008 disability certificate from a physician's assistant, who indicated that appellant could return to work and should utilize a finger splint. However, section 8101(2) of the Act<sup>11</sup> provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within

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<sup>7</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>8</sup> *John W. Montoya*, 54 ECAB 306 (2003).

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

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (July 2000).

<sup>11</sup> See 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

the scope of their practice as defined by the applicable state law. As a physician's assistant is not a physician as defined under the Act, this report is not considered medical evidence.

Appellant did not submit any other medical evidence prior to the Office's April 23, 2008 decision.<sup>12</sup> Therefore, he has failed to establish a *prima facie* claim for compensation.<sup>13</sup> Appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty causally related to his federal employment.

Office procedures provide that a case may be accepted without a medical report when the condition reported is a minor one which can be identified on visual inspection by a lay person; the injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and no time was lost from work due to disability.<sup>14</sup> In this case, there appears to be time lost from work following the February 25, 2008 incident, as the employing establishment indicated that appellant stopped work on February 25, 2008 and the physician's assistant advised that he could return to work on March 6, 2008. The Board finds that a medical report is required under the circumstances of this case.

### CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury on February 25, 2008.

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<sup>12</sup> The record on appeal contains evidence received after the Office issued the April 23, 2008 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office with a request for reconsideration.

<sup>13</sup> See *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>14</sup> See *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 23, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board