



reported he was exiting the main gate of the employing establishment when a gate arm descended and struck him in the head, arm and shoulder, causing his motorcycle to leap forward. The employing establishment controverted the claim, stating that appellant was not injured in the performance of duty.

In a June 10, 2010 chronological record of medical care, a treating registered nurse reported that appellant injured himself when he was on his motorcycle and a gate came down on his back, arm and shoulder. Appellant stated that initially he did not have any pain until June 1, 2010. The nurse also reported that appellant did not come in for treatment on the date of the incident.

In a June 14, 2010 attending physician's report (Form CA-20), Elaine Rynders, a certified physician assistant (PA-C), reported that appellant's x-rays showed no acute injury and diagnosed contusion and muscle sprains. She noted that appellant could return to regular duty work effective June 15, 2010.

By letter dated June 25, 2010, the Office informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. In a letter of the same date, the Office also requested additional factual information from the employing establishment.

Appellant provided a map of the agency building and facility. He noted that he was exiting the motorcycle parking area heading to the main gate, the site of the incident. Appellant alleged that the gate struck him on top of his helmet, struck his arm and then the gate arm broke off. This caused him to pull his arm back. Appellant's hand was on the throttle and the motorcycle lurched forward. He reported twisting his upper body and waist and stated that he immediately noticed discomfort in the upper back area. Later that evening, appellant felt intense pain in his right shoulder and he took old pain medication to alleviate his discomfort. When he ran out of medication, he went to the doctor on June 7, 2010 to get some more. Appellant stated that he did not sustain any other injury since the incident. He explained that he was not performing his job duties at the time of the accident.

In a May 28, 2010 NGA police incident and complaint report, Officer James Schmidy reported that he was working the main gate when appellant informed him that he had been struck by the outbound gate arm on his way off the facility. The incident occurred at 11:00 a.m.

In a July 16, 2010 attending physician's report, Dr. Tanin Parich (Form CA-20), a treating physician, reported that appellant was hit by the gate in his right shoulder and upper back when exiting the parking lot at work on May 28, 2010. He noted that appellant was first examined on June 8, 2010 and diagnosed right foraminal stenosis contusion and muscular skeletal strain in the right upper girdle. When asked if the condition was caused or aggravated by the employment activity, Dr. Parich checked the box marked "no."

By letter dated July 21, 2010, the employing establishment stated that the incident occurred on property owned by the agency and reserved for the exclusive use of its employees. The employing establishment reported that appellant's normal work schedule was 6/6:30 to 4/4:30 p.m. Monday through Friday but that, on the date of the incident, employees were

released early for an upcoming holiday weekend. Appellant was leaving the premises earlier than normal for that reason. The employer reiterated that appellant was not in the performance of duty because he was off the clock and exiting the premises at the time of the injury.

By decision dated July 29, 2010, the Office denied appellant's claim on the grounds that there was no medical evidence that provided a diagnosis which could be connected to the May 28, 2010 employment incident. It specifically noted that though the evidence submitted contained a diagnosis, the location of the diagnosed condition was not specifically identified.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>5</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 specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

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<sup>2</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>4</sup> Elaine Pendleton, *supra* note 2.

<sup>5</sup> See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

<sup>6</sup> James Mack, 43 ECAB 321 (1991).

## ANALYSIS

The Office accepted that the May 28, 2010 incident occurred in the performance of duty.<sup>7</sup> It denied appellant's claim on the grounds that it lacked sufficient medical evidence to support that the alleged condition was medically related to the May 28, 2010 employment incident. The Board finds that he did not submit sufficient medical evidence to support that he sustained a back and neck injury causally related to the May 28, 2010 employment incident.<sup>8</sup>

In a June 14, 2010 attending physician's report, Elaine Rynders PA-C, noted that appellant's x-rays showed no acute injury and diagnosed contusion and muscle sprain. This medical evidence is insufficient to establish a causal relationship between appellant's back condition and the May 28, 2010 employment incident. Registered nurses, licensed practical nurses and physicians assistants, they are not physicians as defined under the Act, their opinions are of no probative value.<sup>9</sup>

In a July 16, 2010 attending physician's report, Dr. Parich reported that appellant was hit by a gate on his right shoulder and upper back when exiting the parking lot at work. He diagnosed right foraminal stenosis contusion and muscular skeletal strain on the right upper girdle. Dr. Parich checked the box marked "no" in response to whether the condition was caused or aggravated by an employment activity. The Board notes that appellant stated that the gate arm struck his helmet and right arm, he did not allege that the gate arm struck his upper back as reported by Dr. Parich.

While Dr. Parich's report establishes a diagnosis, it is not rationalized as to the issue of causal relation. He did not identify or specifically address any clinical findings or test results pertaining to the right shoulder, back or neck. Moreover, Dr. Parich's medical report does not support appellant's May 28, 2010 traumatic injury claim because the physician noted that his right shoulder condition was not related to employment factors. He did not offer a rationalized opinion relating appellant's condition to the May 28, 2010 incident.<sup>10</sup> Thus, Dr. Parich's medical report is insufficient to establish appellant's claim.

The Board finds that the record is without rationalized medical evidence establishing a causal relationship between the May 28, 2010 employment incident and appellant's right shoulder injury. Thus, appellant has failed to meet his burden of proof.

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<sup>7</sup> See e.g., *Hope J. Kahler (Robert A. Kahler)*, 39 ECAB 588 (1988); *Wilmur Lewis Prescott*, 22 ECAB 318 (1921).

<sup>8</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>9</sup> 5 U.S.C. § 8102(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

<sup>10</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

Appellant may submit additional evidence, together with a written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on May 28, 2010 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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