U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK MONTES and U.S. POSTAL SERVICE,
POST OFFICE, Vancouver, Wash.

Docket No. 97-2733; Submitted on the Record;
Issued June 2, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a lower back injury in the performance of duty on April 11, 1995.

On April 12, 1995 appellant, a 27-year-old letter carrier, filed a Form CA-1 claim for benefits based on traumatic injury. Appellant alleged that, while seated in his mail truck on April 11, 1995, he reached out and turned his body to open a mailbox when he felt a "pull" in his lower back.

In support of his claim, appellant submitted a clinic note dated April 11, 1995 which indicated he was being treated with medication [muscle relaxers] and would be reevaluated on April 15, 1995. Appellant also submitted a first aid report dated April 11, 1995 which indicated that he felt a pull in his lower left back while reaching and leaning to open a mail box and had been diagnosed with a lumbar strain.

In a letter to appellant dated April 29, 1997, the Office of Workers' Compensation Programs requested that he submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office also requested that appellant provide a diagnosis and clinical course of treatment for the injury. The Office further requested that appellant describe in detail how the injury occurred, and to provide the names and addresses of persons who witnessed the alleged incident condition. The Office informed the appellant that he had 30 days to submit the requested information.

Appellant submitted progress notes dated April 12, 1995 from a medical clinic where he was examined and treated on April 11, 1995. These notes described appellant's account of injury and related that appellant had sustained a lower back injury, but did not contain a rationalized, probative medical report from a physician indicating that appellant's back injury was causally related to the April 11, 1995 employment incident. Appellant also submitted a

clinic note dated April 17, 1997 which described appellant's account of injury and related that appellant had sustained a lumbar strain. This note was signed by a nurse practitioner. In addition, appellant submitted an undated, typed statement in which he elaborated on how his back injury occurred and subsequently progressed.

An Office memorandum dated June 2, 1997 indicated that the Office had called appellant's treating clinic and inquired as to whether appellant had been examined by a physician. The memorandum indicated that appellant had been examined by a physician's assistant and by a nurse practitioner, but not by a physician.

By decision dated June 2, 1997, the Office found that appellant failed to submit sufficient medical evidence to support his claim that he sustained a lower back injury in the performance of duty on April 11, 1995.

The Board finds that appellant has not met his burden of proof to establish that he sustained a lower back injury in the performance of duty on April 11, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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, 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4] 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.[5] The medical evidence required to establish causal relationship is usually rationalized medical 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 one of reasonable medical certainty,

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.* For a definition of the term "injury," *see* 20 C.F.R. §10.5(a)(14).

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.[6]

In the present case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,[7] and appellant has not submitted a rationalized, probative medical opinion from a physician pursuant to section 8101(2)[8] in support of his claim that he sustained a lower back injury on April 11, 1995 causally related to his employment.

In the present case, the only evidence appellant submitted consisted of clinic notes and progress reports issued on the date of his employment incident, April 11, 1995, and within a few weeks of the incident. These notes and reports described appellant's account of injury and related that appellant had sustained a lower back injury, but did not contain a rationalized, probative medical opinion from a physician sufficient to establish that appellant sustained an injury or disability on April 14, 1995 causally related to employment factors. Further, the Board notes that a nurse and physician's assistant are not defined as "physicians" under the Act.[9]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

As there is no reasoned medical evidence addressing and explaining why his claimed injury was caused by the April 11, 1995 employment incident, appellant has not met his burden of proof in establishing that he sustained a lower back injury causally related to employment factors. Thus, the Office's decision is affirmed.

[6] *Id.*

[7] *See John J. Carlone*, *supra* note 4.

[8] 5 U.S.C. § 8101(2).

[9] *See Diane Williams*, 47 ECAB 613 (1996); *Shelia A. Johnson*, 46 ECAB 323 (1994); *Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

The decision of the Office of Workers' Compensation Programs dated June 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 2, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member