

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEMETRIUS A. PINO and DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS, Albuquerque, NM

*Docket No. 01-108; Submitted on the Record;  
Issued July 18, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on June 23, 2000.

On June 24, 2000 appellant, a 29-year-old forestry technician, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on June 23, 2000 he sustained an injury to his lower back while in the performance of duty. He explained that he injured his back while moving some logs and digging a fire line. The employing establishment authorized an examination on June 26, 2000. On June 26, 2000 Bernadette Dayzie, a nurse practitioner, diagnosed low back pain.

By letter dated August 11, 2000, the Office of Workers' Compensation Programs advised appellant that the record was insufficient to establish that he sustained an injury on June 23, 2000. The Office requested that appellant submit additional medical information and specifically requested a physician's report regarding appellant's claimed injury. Additionally, the Office informed appellant that a nurse practitioner was not considered to be a physician. He was afforded 30 days to submit the requested medical information. Appellant did not timely respond to the Office's request for additional information.

In a decision dated September 14, 2000, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury as alleged. The Office explained that appellant had not submitted any medical documentation from a qualified physician.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on June 23, 2000.

A claimant seeking compensation 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,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.<sup>2</sup>

In order to determine whether an employee sustained a traumatic injury<sup>3</sup> 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> Appellant failed to satisfy this latter requirement.

In the instant case, while appellant alleged that he sustained a traumatic injury on June 23, 2000, he did not provide adequate medical evidence demonstrating that he sustained a personal injury as alleged. As a nurse practitioner, Ms. Dayzie is not considered a “physician” under section 8101(2) of the Act and thus, she cannot render a medical opinion.<sup>6</sup> A similar prohibition applies to physical therapists.<sup>7</sup> Thus, appellant’s physical therapy records and Nurse Dayzie’s June 26, 2000 report are insufficient to meet appellant’s burden of proof. The only medical evidence signed by a physician consists of a July 3, 2000 radiology report, which noted a clinical history of pain but no evidence of fracture or dislocation. Accordingly, appellant has failed to demonstrate that he sustained an injury in the performance of duty on June 23, 2000.<sup>8</sup>

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<sup>2</sup> See *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> A “*Traumatic injury*” is defined as “a condition of the body caused by a specific event or incident or a series of events or incidents, within a single workday or shift.” The condition “must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.” 20 C.F.R. § 10.5(ee).

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>6</sup> *Vicky L. Hannis*, 48 ECAB 538 (1997).

<sup>7</sup> *Thomas R. Horsfall*, 48 ECAB 180 (1996).

<sup>8</sup> Appellant submitted additional evidence on appeal. Inasmuch as the Board’s review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant’s newly submitted evidence. 20 C.F.R. § 501.2(c).

The September 14, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 18, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member