

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES TERRY and DEPARTMENT OF COMMERCE, NATIONAL  
INSTITUTE OF STANDARDS & TECHNOLOGY, OCCUPATIONAL HEALTH  
& SAFETY DIVISION, Gaithersburg, MD

*Docket No. 02-81; Submitted on the Record;  
Issued April 10, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an injury in the performance of duty.

The Board has reviewed the case record and finds that appellant has failed to establish that he sustained an injury in the performance of duty.

On April 23, 2001 appellant, then a 56-year-old physical science technician, filed an occupational disease claim alleging that on April 10, 2001 he first realized that his back pain was caused or aggravated by factors of his federal employment.

In a June 5, 2001 letter, the Office of Workers' Compensation Programs advised appellant to submit medical evidence supportive of his claim. Appellant did not respond.

By decision dated September 4, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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, 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.<sup>1</sup>

In this case, appellant failed to submit the required factual and medical evidence to establish a *prima facie* claim for an occupational disease.<sup>2</sup> Appellant merely filed a claim for his back condition without providing any relevant or probative medical evidence. Thus, appellant has failed to satisfy his burden of proof.<sup>3</sup>

The September 4, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 10, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>1</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>2</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995).

<sup>3</sup> The Board notes that, on appeal, appellant submitted medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).