

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIE R. BLUFORD and DEPARTMENT OF COMMERCE,  
BUREAU OF THE CENSUS, Oakland, CA

*Docket No. 02-1633; Submitted on the Record;  
Issued December 10, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

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

On October 19, 2000 appellant, then a 49-year-old enumerator, filed an occupational disease claim alleging that he sustained lower back pain as a result of sitting for extended periods of time while attending a training class on May 18 and 19, 2000.

By letter dated February 9, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional factual evidence, as well as, medical evidence supportive of his claim.

In a response dated March 1, 2001, appellant stated that he attended eight-hour training sessions on May 17 and 19, 2000. Appellant described the onset of his symptoms and the medication he took to alleviate them. Appellant indicated that on June 18, 2000 he telephoned his physician and scheduled an appointment for July 28, 2000.

Appellant submitted a July 28, 2000 progress report of Dr. Fred Blackwell, a Board-certified orthopedic surgeon, revealing a description of his census work duties which required him to walk and stand a great deal until June 18, 2000 when his condition flared up and he stopped working. He noted appellant's complaints of pain in the right lower back and his findings on physical examination. Dr. Blackwell stated that appellant had a lumbosacral strain and sprain with exacerbation. He further stated that appellant's condition had been well documented.

Appellant also submitted Dr. Blackwell's February 19, 2001 attending physician's report indicating that he sustained a lumbosacral strain and sprain on May 18, 2000 when he was struck by a steel door in the lower back. Dr. Blackwell indicated that appellant's conditions were caused or aggravated by the employment activity by placing a checkmark in the box marked

“yes.” Dr. Blackwell’s work capacity evaluation of the same date revealed that appellant could work eight hours a day with certain physical restrictions.

The employing establishment submitted a March 15, 2001 letter indicating that the dates indicated by appellant as dates he worked were inconsistent with appellant’s leave and earning statements. The employing establishment indicated that during the period May 14 to 27, 2000 appellant attended a training session for five hours on May 18, 2000 and six hours on May 26, 2000.

By decision dated April 4, 2001, the Office found that Dr. Blackwell provided an inaccurate history of injury, there was a discrepancy regarding the number of hours appellant actually worked in May 2000 and appellant delayed in seeking medical treatment after the injury occurred. Accordingly, the Office found the evidence of record insufficient to establish that appellant sustained an injury caused by factors of his federal employment in the manner alleged. In an April 30, 2001 letter, appellant requested an oral hearing before an Office representative.<sup>1</sup>

Subsequently, the Office received Dr. Blackwell’s May 4, 2001 letter clarifying the history of appellant’s injury based on appellant’s request to do so. Based on appellant’s account, Dr. Blackwell stated that appellant attended a 16-hour training session that began on May 18, 2000. He further stated that after the first session, appellant experienced lower back pain, which increased on the second day of the training session. He reported appellant’s symptoms and use of nonprescription medication. Dr. Blackwell reviewed his notes and stated that appellant began having back problems on approximately June 18, 2000. Dr. Blackwell noted that it was unusual that he was unable to accommodate patients for six weeks once a call had been made for an appointment. He further noted that appellant came in today on very short notice and that he believed appellant could have come in earlier than his scheduled appointment on July 28, 2000. He concluded that he had nothing further to suggest or offer regarding appellant’s clinical examination beyond what he had already provided in his July 28, 2000 progress note.

In a supplemental letter dated June 22, 2001, Dr. Blackwell clarified his comment suggesting that appellant could not have seen him earlier than July 28, 2000. He stated that appellant wanted it to be known that he had a regular follow-up appointment for that date and that was the reason why he suffered through the complaints which began on May 17, 2000.

By decision dated February 28, 2002, the hearing representative affirmed the Office’s decision.

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

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<sup>1</sup> By letter dated November 5, 2001, the Office hearing representative advised appellant of the agreement they had reached to conduct a review of the written record rather than a hearing after he arrived at the hearing well after the scheduled start time. The hearing representative noted that appellant’s five exhibits would be entered into the record and considered on review. The hearing representative also noted appellant’s statements that she worked for the employing establishment 3 days totaling 16 hours, that she attended a training class during which she sat and stood, and that she had to carry training materials weighing about 5 to 7 pounds.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his 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.<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 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 a causal relationship 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>5</sup>

Appellant did not submit sufficient medical evidence to establish that he sustained a lower back injury in the performance of duty. Appellant has alleged that he suffered a lower back injury as a result of sitting for extended periods of time while attending training classes on or about May 17, 18 or 19, 2000.

In his July 28, 2000 progress report, Dr. Blackwell set forth the history of the onset of appellant's back condition in stating that appellant's back pain flared up while performing his census work duties of walking and standing a great deal of time. In his February 19, 2001 attending physician's report, Dr. Blackwell described the history of injury as appellant being struck in the lower back by a steel door. Dr. Blackwell corrected his July 28, 2000 version of the history as requested by appellant in his May 4, 2001 letter by stating that appellant developed back pain after attending the first of two 8-hour training sessions. The Board, however, finds that the history provided by appellant and Dr. Blackwell is not accurate. According to the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

employing establishment appellant attended a training session for five hours on May 18, 2000 and six hours on May 26, 2000.

Further, Dr. Blackwell failed to provide any medical rationale in his July 28, 2000 progress report and February 19, 2001 attending physician's report<sup>6</sup> explaining how or why appellant's back condition was caused by factors of his employment.

Inasmuch as appellant has failed to submit any rationalized medical evidence based on an accurate factual background establishing that he sustained an injury causally related to factors of his federal employment, the Board finds that appellant has failed to discharge his burden of proof in this case.

The February 28, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 10, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>6</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).