

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESUS S. GUTIERREZ and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, San Antonio, TX

*Docket No. 02-660; Submitted on the Record;
Issued July 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a back injury in the performance of duty on June 8, 2001.

On August 27, 2001 appellant, then a 53-year-old maintenance worker, filed a notice of traumatic injury alleging that he suffered from lower back pain as a result of using a hand hatchet to cut wood and the use of an air hammer over his shoulder while tearing out a ceiling wall on June 8, 2001.

Appellant submitted medical records from Texas MedClinic indicating that he received treatment for contact dermatitis and a chemical burn of the hands. The date of injury was listed as October 16, 2001.

In a letter dated November 21, 2000, the Office of Workers' Compensation Programs advised appellant of the medical and factual evidence required to establish his claim for compensation.

In a duty status report dated October 15, 2001 and received by the Office on November 30, 2001, appellant is diagnosed as being totally disabled from work due to a herniated lumbar disc with stenosis. The date of injury is listed as June 8, 2001. The description of how the injury occurred states: "While using hand hatchet cutting trees [and] brush [and] using air hammer over shoulders injured back." The physician's name is not included on the report and the signature is illegible. The specialty is listed as "ortho/spine."

In a decision dated January 2, 2002, the Office denied compensation on the grounds that appellant failed to establish a causal relationship between his back condition and the work incident of June 8, 2001.

The Board finds that appellant has failed to establish that he sustained a back injury in the performance of duty on June 8, 2001.¹

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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.³ 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.⁴

To determine whether an 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.⁵ 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.⁶ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁹ The mere

¹ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

² 5 U.S.C. § 8101 *et seq.*

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Id.*

⁵ *Shirley A. Temple*, 48 ECAB 404 (1997); *see John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

⁷ *Shirley A. Temple*, *supra* note 5.

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *Shirley A. Temple*, *supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.¹⁰

In this case, the Office acknowledges that appellant was performing the work described on the CA-1 claim form on June 8, 2001. The Office, however, determined that the medical evidence fails to establish a causal relationship between the employment incident and appellant's diagnosed back condition. The Board agrees. Appellant has not provided a reasoned medical opinion from a qualified physician under the Act, who attributes appellant's alleged lumbar disc herniation and stenosis to his work factors. The only relevant medical report of record contains an illegible signature so it is impossible to ascertain whether the report was prepared by a physician. Furthermore, the report does not contain any medical rationale to carry appellant's burden of proof on causation. The report does not explain with medical rationale why appellant is disabled by the diagnosed back condition. There is also no explanation as to how the diagnosed condition is causally related to the June 8, 2001 work factors. The Board, therefore, finds that appellant has submitted insufficient medical evidence to establish that he sustained a back injury in the performance of duty on June 28, 2001.

The decision of the Office of Workers' Compensation Programs dated January 2, 2002 is hereby affirmed.

Dated, Washington, DC
July 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Victor J. Woodhams*, 41 ECAB 345 (1989).