

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY ALLEN and DEPARTMENT OF DEFENSE,
DEFENSE INTELLIGENCE AGENCY, BOLLING AIR FORCE BASE,
Washington, DC

*Docket No. 03-1475; Submitted on the Record;
Issued August 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a back or shoulder injury in the performance of duty.

On February 7, 2003 appellant, then a 52-year-old police officer, filed a claim alleging that, on February 2, 2003, he was cleaning a file cabinet out and unloading trash when he injured his back and shoulder. Appellant stopped work on February 3, 2002.

In support of his claim, appellant submitted clinic notes from Kaiser Permanente dated February 5 to 29, 2003; and a narrative statement. The February 5, 2003 note indicated with a check mark "yes" that appellant sustained a shoulder injury which was work related and indicated that the injury date was December 2002. The note indicated that the back injury was not the result of a work-related accident. Appellant was to return to work on February 6, 2003 to a light-duty position for one week. The notes dated February 11 and 29, 2003 indicated that appellant was treated for back pain and would be unable to work until February 23, 2003. Appellant's narrative statement noted that, on February 2, 2003, while pulling files overhead he injured his back.

In a letter dated March 12, 2003, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In a decision dated April 15, 2003, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the alleged injury on February 2, 2003 as required by the Federal Employees' Compensation Act.¹

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to the factors of his federal employment.

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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 is 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

In order to determine whether an employee actually sustained an injury 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 which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

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.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

In this case, it is not disputed that appellant was cleaning out a cabinet and moving boxes on February 2, 2003. However, the medical evidence is insufficient to establish that the incident caused an injury. The only medical evidence submitted in support of appellant's case was clinic notes from February 5 to 29, 2003. The February 5, 2003 note indicated with a check mark "yes" that appellant sustained a shoulder injury which was work related and indicated that the injury date was December 2002. The note indicated that, with regard to the back pain, it was not the result of a work-related accident. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷ Additionally, the notes do not provide a complete and accurate history of the February 2, 2003 injury as it indicated that the injury occurred in December 2002, which is different than the date reported by appellant of February 2, 2003.⁸ Therefore, this report is insufficient to meet appellant's burden of proof. The notes dated February 11 and 29, 2003 indicated that appellant was treated for back pain and would be unable to work until February 23, 2003. However, these notes do not contain a specific and rationalized opinion as to the causal relationship between appellant's employment and his injury.⁹ Moreover, the notes did not provide findings upon physical examination, a diagnosis or a well-reasoned discussion explaining how appellant's condition is causally related to appellant's employment.¹⁰ The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. His own unsupported assertion of an employment relationship is not proof of the fact. In a case such as this, proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement.¹¹

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁸ See *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003) (to establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship); *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); see also *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁹ See *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003) (rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment, 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 established incident or factor of employment); *Louis T. Blair, Jr.*, 54 ECAB ____ (Docket No. 02-2289, issued January 16, 2003); *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); see also *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹⁰ *Id.*

¹¹ See *Margaret A. Donnelly*, 15 ECAB 40 (1963).

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.¹² Causal relationships 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.¹³

The decision of the Office of Workers' Compensation Programs dated April 15, 2003 is affirmed.

Dated, Washington, DC
August 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).