

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNARD A. SANTANIELLO and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leeds, MA

*Docket No. 03-497; Submitted on the Record;
Issued July 8, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a back injury in the performance of duty.

On May 9, 2001 appellant, then a 68-year-old food service worker, filed a claim for a traumatic injury on May 4, 2001 when he fell over a silverware container. He subsequently submitted medical evidence in support of his claim.

By letter dated November 27, 2001, the Office of Workers' Compensation Programs asked appellant to provide additional evidence including a physician's report explaining how his condition was caused by the work incident on May 4, 2001.

In a response to the Office's November 27, 2001 letter, appellant provided a more specific description of the May 4, 2001 incident. He stated that he fell on a silverware cart and his right leg became wedged under the tray, the tray moved, and he fell with his back against a milk container.

By decision dated January 15, 2002, the Office denied appellant's claim on the grounds that the medical evidence of record failed to explain how his condition was caused or aggravated by the May 4, 2001 work incident.

By letter dated January 24, 2002, appellant requested a hearing. On July 24, 2002 a hearing was held before an Office hearing representative.

By decision dated and finalized October 21, 2002, an Office hearing representative affirmed the Office's January 15, 2002 decision, finding that there was no probative medical evidence of record establishing that appellant had a medical condition causally related to the May 4, 2001 work incident.

The Board finds that appellant failed to establish that he sustained a back injury causally related to factors of his employment.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.² An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability and/or condition relate to the employment incident. As the Office did not dispute that the May 4, 2002 incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.³

To establish a causal relationship between appellant’s condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s 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.⁴ Appellant failed to submit such evidence in this case.

In form reports dated June 1 and 22, 2001, Dr. Michael A. Rosner, appellant’s primary care physician, noted that he fell over a silverware container at work on May 4, 2001. He diagnosed dessication of the intervertebral disc at L4-5 as shown on a magnetic resonance imaging (MRI) scan. However, Dr. Rosner did not provide any medical rationale explaining how appellant’s disc condition was causally related to the May 4, 2001 employment incident.

Dr. Norman Halpern diagnosed spinal stenosis with a disc bulge in an undated report. However, he did not explain how this condition was causally related to the May 4, 2001 work incident.

In narrative reports dated June 15 and December 14, 2001, Dr. Gary J. Graziano, a chiropractor, noted that x-rays revealed dessication of the L4-5 intervertebral disc and a mild posterior disc bulge, mild facet joint arthropathy at L4-5 and L5-S1 levels and a mildly narrowed spinal canal at L4-5. He diagnosed an injury to the lumbar intervertebral disc without myelopathy, sacroiliac joint pain and facet syndrome of the lumbar spine. The record also contains Dr. Graziano’s treatment notes and reports dated June 6, 2001 to August 26, 2002. Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by

¹ See *John J. Carlone*, 41 ECAB 354, 356 (1989).

² See *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

³ See *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁴ *Gloria J. McPherson*, 51 ECAB 441, 446 (2000).

x-ray to exist.⁵ Dr. Graziano did not indicate in any of his reports that findings of subluxations were demonstrated by x-ray to exist. Therefore, he is not deemed to be a physician under the Act and his reports have no probative value on the issue of whether appellant sustained an employment-related injury.

In a report dated February 10, 2002, Dr. A. Karagh, a physician specializing in rehabilitation, indicated that appellant tripped and injured his back on May 4, 2001. However, he did not provide a diagnosis or explain how appellant's back condition was caused or aggravated by the May 4, 2001 incident.

As appellant did not submit a rationalized medical report on the issue of causal relationship, he did not meet his burden of proof in establishing that he sustained an injury in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated October 21 and January 15, 2002 are affirmed.

Dated, Washington, DC
July 8, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).