

**United States Department of Labor
Employees' Compensation Appeals Board**

LORI A. GEARSBECK, Appellant

and

**DEPARTMENT OF THE ARMY, NYARNG,
Fort Drum, NY, Employer**

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**Docket No. 04-476
Issued: April 6, 2004**

Appearances:
Lori A. Gearsbeck, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 7, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant sustained an injury in the performance of duty as alleged.

FACTUAL HISTORY

On March 20, 2001 appellant, then a 29-year-old supply clerk, filed a notice of traumatic injury alleging that on February 23, 2001 she slipped and fell on ice and injured her back, leg and ankle in the performance of duty.

In support of her claim, appellant submitted two documents from the Family Practice Associates in Watertown, New York requesting physical therapy for an unspecified workers' compensation injury. The Office also received a nursing report from the Family Practice

Associates, PC dated July 11, 2003, which diagnosed “pain low back/lumbago, sprain/strain back unspecified site, sprain/strain sacroiliac region.”

In a letter dated September 2, 2003, the Office advised appellant that the information submitted was insufficient to establish the claim and requested additional information. The Office requested that appellant submit a complete medical history of all clinical findings on or after February 23, 2001, history of her injury and all prior industrial and nonindustrial injuries to similar parts of her body, a firm diagnosis of any condition resulting from the injury, findings, symptoms and or test results which support all conditions diagnosed and a physician’s opinion as to how the injury resulted in the condition diagnosed. No further evidence was received.

By decision dated November 7, 2003, the Office denied appellant’s claim. The Office accepted that appellant slipped on ice and fell since the implicated trauma was not rebutted by the evidence on file. The Office, however, found that appellant failed to submit any medical evidence which provided a diagnosis which could be connected to the claimed event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴

ANALYSIS

In support of her claim that she sustained low back, leg and ankle pain after a slip and fall on ice in the performance of duty, appellant submitted requests for physical therapy and a

¹ 5 U.S.C. §§ 8101-8193.

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

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

nursing report from the Family Practice Associates, PC in Watertown, New York. The Office accepted that she did in fact slip and fall on ice as alleged, since there is no evidence of record which challenges her claim. It determined, however, that the medical evidence was insufficient to establish that appellant's employment was the cause of her injury.

The Board finds that the Office properly denied appellant's claim. The record contains no rationalized medical evidence establishing that appellant sustained any injury causally related to her employment duties. The Board notes that the only narrative report submitted in support of the claim with a diagnosed condition generally associated with an employment incident was authored by a nurse and, therefore, the report has no probative value and does not constitute probative medical evidence.⁵ Although the Office pointed out the deficiencies in the medical evidence in its letter to appellant dated September 2, 2003 and asked her to provide a medical report which explained the cause of the claimed work injury, no such evidence was forthcoming. Therefore, appellant has not met her burden of proof to establish her compensation entitlement for the injury claimed.

CONCLUSION

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

⁵ See *Diane Williams*, 47 ECAB 613 (1996); *Joseph N. Fassi*, 42 ECAB 677 (1991) (a medical report signed by a nurse does not constitute probative medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2003 is affirmed.

Issued: April 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member