

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

LARRY D. DUNKIN, Appellant

and

**DEPARTMENT OF THE ARMY, McALESTER
ARMY AMMUNITION PLANT, McAlester, OK,
Employer**

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**Docket No. 04-1949
Issued: December 22, 2004**

Appearances:
Larry D. Dunkin, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 2, 2004 appellant filed a timely appeal of the July 12, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on May 24, 2004.

FACTUAL HISTORY

On June 1, 2004 appellant, a 51-year-old general supply specialist, filed an occupational disease claim alleging that he injured his back due to repetitive lifting and bending while removing 40 millimeter rounds from their container. He identified May 24, 2004 as the date of injury. Appellant was treated at the employing establishment's occupational health clinic, on May 24, 2004, the day of his alleged injury. He received a diagnosis of "strains," was prescribed

Motrin and placed on light duty. Dr. Danny L. Minor, a general surgeon, examined appellant on June 24, 2004 and diagnosed a lumbar strain due to the May 24, 2004 employment incident. He released him to resume his regular duties on June 11, 2004.

By decision dated July 12, 2004, the Office denied appellant's claim, finding that the medical evidence did not establish that the claimed medical condition resulted from the accepted event.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.²

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury.⁴ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁵

ANALYSIS

Appellant alleged that he injured his back on May 24, 2004 while performing repetitive lifting and bending. An employing establishment supervisor verified that appellant had performed the particular duties for approximately 45 minutes and that the ammunition clips he had lifted weighed 21 pounds. Although he filed an occupational disease claim (Form CA-2), it

¹ 5 U.S.C. § 8101 *et seq.*

² 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). 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 must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

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

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

is appropriately considered a traumatic injury because the alleged injury was confined to a single workday, May 24, 2004.⁶

The employing establishment's occupational health clinic records for May 24, 2004 note that appellant stated that he was injured while unloading 40 millimeter rounds. Appellant identified his right lower and mid back as well as his right forearm as areas of injury. Appellant received a diagnosis of strains, was placed on light duty and advised to return in one week. When appellant returned to the occupational health clinic on May 31, 2004 he was referred to workers' compensation for followup because the staff physician was on leave at the time.

Dr. Minor initially examined appellant on June 4, 2004 and his treatment notes report a history of injury due to packing large rounds of artillery cartridges while simultaneously twisting and lifting. He also reported that appellant was required to work rapidly. The noted activity resulted in pain in appellant's right lumbar area. Physical examination revealed limited range of motion in the lumbar region of appellant's back. Dr. Minor diagnosed a lumbar strain sustained on or about May 24, 2004. He prescribed medication and advised that appellant would be unable to perform his regular duties for approximately 10 days. When he next examined appellant on June 11, 2004, Dr. Minor noted a diagnosis of lumbar strain occurring on or about May 24, 2004 and reported that appellant had improved and was able to return to normal work without restriction.

The Board finds that appellant has established that he sustained an injury in the performance of duty. Accordingly, his claim is accepted for a May 24, 2004 lumbar strain. This finding is supported by Dr. Minor's June 4 and 11, 2004 treatment records as well as the medical records from the employing establishment's occupational health clinic. Because the Office did not accept fact of injury, it did not further evaluate the claim to determine whether appellant was disabled due to this injury. On return of the case record to the Office, the Office shall determine appellant's entitlement to disability benefits resulting from this injury.

CONCLUSION

The Board finds that appellant has established that he sustained a lumbar strain in the performance of duty on May 24, 2004.

⁶ The regulation defines an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q) (2004). A "traumatic injury" is defined as "a condition of the body caused by a specific event or incident; or a series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee) (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 22, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member