

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

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**BILLY H. REED, Appellant**

**and**

**DEPARTMENT OF THE ARMY, BLUE GRASS  
ARMY DEPOT, Richmond, KY, Employer**

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**Docket No. 04-951  
Issued: July 6, 2004**

*Appearances:*  
*Billy H. Reed, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On March 1, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 29, 2004, which found that appellant failed to establish that he sustained an injury in the performance of duty. 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 is whether appellant established that he sustained an injury in the performance of duty on July 8, 2003.

**FACTUAL HISTORY**

On July 16, 2003 appellant, a 59-year-old sheet metal mechanic, filed a traumatic injury claim alleging that on July 8 and 9, 2003 he reinjured his back while lifting his body weight and getting up and down to perform the duties of his limited-duty job.<sup>1</sup> Appellant stopped work on

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<sup>1</sup> Appellant fractured his spine in a nonemployment-related motorcycle accident and was returned to light duty to accommodate his restrictions.

July 10, 2003, returned to work on August 4, 2003 and stopped again on August 25, 2003. The employing establishment controverted continuation of pay on the grounds that appellant's claim was not a traumatic injury claim as the disability resulted over a two-day period. The employing establishment noted on July 23, 2003 that appellant's light-duty tasks included "opening and closing the security gates by means of a hand held remote control." It indicated the task "could be done in a sitting or standing position."

By letter dated August 20, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant about the type of factual and medical evidence he needed to submit to establish his claim.

The Office subsequently received an August 29, 2003 report from Dr. William O. Shaffer, a treating Board-certified orthopedic surgeon, who noted appellant "had to get up and out of a chair over 50 times a day" and stated "I believe those were aggravating in terms of his subsequent course and difficulties following his spinal injuries."

By decision dated September 23, 2003, the Office denied appellant's claim on the grounds that he failed to establish fact of injury. The Office found that the evidence was unclear as to what the aggravating work events were and the medical evidence did not diagnose a firm medical condition. Thus, he failed to establish that he sustained an injury as defined under the Federal Employees' Compensation Act.

Appellant requested reconsideration of the denial of his claim on November 15, 2003.

In a December 16, 2003 letter, the employing establishment responded to appellant's request for reconsideration. The employing establishment stated that appellant was placed in a limited-duty job based upon restrictions issued by his physician subsequent to a nonemployment-related motorcycle accident.

In a letter dated January 14, 2004, appellant alleged that the limited-duty job he was given required him to constantly get up and down. He alleged that the remote control he was given did not work properly to open the gate as he "had to look and make sure no one was near the gate" when he operated the remote.

By decision dated January 29, 2004, the Office denied modification of the September 23, 2003 decision. The Office noted that the evidence submitted was insufficient to establish that he was required to perform excessive standing or walking as part of his light-duty job or that the remote control to open the security gate was faulty. The Office also found that the medical evidence lacked a clear diagnosis.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>2</sup> 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 applicable time limitation;

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

The medical evidence required to establish causal relationship generally 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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> 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.<sup>11</sup>

### ANALYSIS

In the instant case, the Office found that the evidence of record was insufficient to establish that appellant sustained an injury due to the duties of his limited-duty job. The Board notes that appellant has maintained his condition was due to getting up and down to open a gate and that the remote control he was given was broken. The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB \_\_\_\_ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>8</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>9</sup> *Tomas Martinez*, 54 ECAB \_\_\_\_ (Docket No. 03-396, issued June 16, 2003).

<sup>10</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB \_\_\_\_ (Docket No. 03-565, issued July 9, 2003).

probative value and will stand unless refuted by strong or persuasive evidence.<sup>12</sup> In the circumstances of this case, the Board finds that the evidence supports appellant's allegations. The employing establishment noted that appellant could perform his duties sitting or standing. The record contains no evidence contradicting appellant's statement that he got up and down to open the gate. Accordingly, the Board finds that appellant is claiming an occupational injury attributed to his employment duties over several days opening and closing the security gates.

However, the Board finds that he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the accepted employment factors. The only medical evidence submitted was the August 29, 2003 report of Dr. Shaffer. While attributing appellant's condition to having to frequently get up and out of a chair, the physician failed to diagnose any medical condition beyond noting that appellant's spinal injuries were aggravated by this activity. On August 20, 2003 the Office advised appellant of the type of medical evidence needed to establish his claim. Dr. Shaffer's report did not include a firm medical diagnosis of appellant's back condition and did not explain how or why appellant's prior back condition was aggravated by his light-duty job requirements. The Board finds that Dr. Shaffer's report is insufficient to establish appellant's claim.

### **CONCLUSION**

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury due to his employment, the Board finds that he has failed to satisfy his burden of proof in this case.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed as modified.

Issued: July 6, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> *Linda S. Christian*, 46 ECAB 598 (1995).