

By letter dated December 12, 2002, the Office requested additional factual and medical information from appellant regarding his claim for a right heel condition.

Appellant submitted a duty status report dated November 25, 2002, received by the Office on January 8, 2003, in which a physician diagnosed low back pain and listed work restrictions.¹ The physician checked “yes” that the history provided by appellant corresponded to that provided on the form as “left heel pain (herniated disc).”

In a duty status report dated October 7, 2002, received by the Office on February 21, 2003, a physician listed clinical findings of right leg and back pain. He diagnosed a herniated nucleus pulposus of the lumbar spine and found that appellant was unable to perform the duties of his employment. The physician checked “yes” that the history given by appellant matched that on the form as an injury occurring due to appellant’s “continuous, daily job duties.”

By decision dated February 24, 2003, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish that he sustained an injury as alleged. The Office found that appellant had not described the employment activities to which he attributed his condition and had not submitted any medical evidence establishing a diagnosis related to employment activities.

FACTUAL HISTORY -- ISSUE 2

On December 5, 2002 appellant filed a claim for a traumatic injury occurring on December 3, 2002 in the performance of duty. Appellant alleged that he injured his lower back muscles on that date lifting heavy parcels into a hamper. Appellant stopped work on December 4, 2002 and returned to work on December 5, 2002. The Office assigned the claim File No. A16-2048812.

In an unsigned form report dated December 5, 2002, Dr. Rashid Khan, a Board-certified internist, diagnosed lumbar sprain and found that appellant could return to work on that date with restrictions. He referred appellant for physical therapy.

In a physical therapy report dated December 5, 2002, a physical therapist noted that appellant related a history of injury on December 3, 2002 when he strained his back lifting a heavy parcel. He noted that appellant had a past medical history of a herniated disc at L4-5 on the right with some right heel symptoms.

In a duty status report dated December 18, 2002, a physician diagnosed a herniated nucleus pulposus at L5 by magnetic resonance imaging scan study. The physician checked “yes” that the history of injury provided by appellant corresponded to the history given on the form of appellant injuring his back lifting a box. The physician found that appellant could resume work with limitations.

On January 15, 2003 the Office requested additional factual and medical information from appellant regarding his claim for an injury on December 3, 2002. Appellant submitted a

¹ The name of the physician is not legible.

duty status report dated January 8, 2003, received by the Office on January 21, 2003, in which a physician provided no description of physical findings or diagnosis and did not specifically address whether appellant could resume work. He listed physical limitations which matched appellant's usual employment requirements.

In a decision dated February 27, 2003, the Office denied appellant's claim for a traumatic injury occurring on December 3, 2002 on the grounds that he did not establish fact of injury. The Office found that appellant had established the occurrence of the claimed employment incident but did not establish a diagnosed condition resulting therefrom.

LEGAL PRECEDENT -- ISSUE 1

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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.²

ANALYSIS -- ISSUE 1

In this case, appellant did not identify the specific employment factors alleged to have caused or contributed to his right heel pain. As noted above, appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected the condition or conditions for which compensation is claimed.³ Therefore, appellant has not established a factual basis for his occupational disease claim.

Further, appellant did not submit any medical evidence supporting a causal relationship between a diagnosed condition and factors of his federal employment. In a form report dated October 7, 2002, a physician listed findings of right leg and back pain and diagnosed a herniated nucleus pulposus of the lumbar spine. However, as the physician merely checked a box indicating that the history given by appellant corresponded to the description of how the injury occurred, without providing any supporting rationale, the physician's opinion has little probative value and is insufficient to establish causal relationship.⁴ Further, the signature of the physician

² *Jerry D. Osterman*, 46 ECAB 500 (1995).

³ *See Judith A. Peot*, 46 ECAB 1036 (1995).

⁴ The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. *Ruth S. Johnson*, 46 ECAB 237 (1994).

is not legible and thus the report lacks proper identification.⁵ Therefore, the October 7, 2002 report is insufficient to establish appellant's occupational disease claim.

In a form report dated November 25, 2002, a physician diagnosed low back pain and checked "yes" that the history provided by appellant was the same as that given on the form of right heel pain and a herniated disc. However, the physician's diagnosis of low back pain is unsupported by any objective medical evidence. Further, as the physician's signature is not legible, it cannot be considered probative medical evidence.⁶ Additionally, the physician failed to provide a rationalized medical opinion, based upon a reasonable medical certainty, that there was a causal connection between appellant's condition and any specific workplace factors.⁷

The Office advised appellant of the type of evidence necessary to establish his claim. However, the Office did not receive any factual evidence or rationalized medical reports from appellant within the time allotted.⁸ Consequently, appellant has not met his burden of proof to establish that he sustained a right heel or back condition in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act⁹ 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 Act¹⁰ and that an injury was sustained in the performance of duty.¹¹ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹²

ANALYSIS -- ISSUE 2

In this case, the Office accepted that appellant was a federal employee who timely filed his claim for compensation benefits. The Office does not dispute that the December 3, 2002 incident occurred at the time, place and in the manner alleged. The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the

⁵ *Merton J. Sills*, 39 ECAB 572 (1988).

⁶ *Id.*

⁷ *Thomas L. Hogan*, 47 ECAB 323 (1996).

⁸ Appellant submitted evidence which was received by the Office subsequent to the issuance of its February 24, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may submit his evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Joe D. Cameron*, 41 ECAB 153 (1989).

¹¹ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹² *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident. In order to establish causal relationship between the diagnosed condition and the employment incident, appellant must submit rationalized medical evidence based on a complete factual and medical background, supporting such causal relationship.¹³

Appellant submitted a form report dated December 5, 2002 from Dr. Khan, who diagnosed lumbar sprain and found that appellant could work with restrictions.¹⁴ However, Dr. Khan did not address the cause of the diagnosed condition, relate a history of injury, or list any findings on physical examination and thus his opinion is of little probative value.¹⁵ Additionally, the December 5, 2002 report was not signed by Dr. Khan, and therefore does not constitute competent medical evidence.¹⁶

In a duty status report dated December 18, 2002, a physician diagnosed a herniated nucleus pulposus at L5 and found that appellant could return to work with restrictions. The physician checked “yes” that the history provided by appellant corresponded to the history given on the form of appellant injuring his back lifting a box. As this report lacks any findings upon physical examination, medical narrative or explanation of the mechanism of injury, it is insufficient to meet appellant’s burden of proof.¹⁷ Additionally, the report lacks a legible signature from a qualified physician and thus lacks proper identification and cannot be considered as probative evidence.¹⁸

Appellant further submitted a duty status report dated January 8, 2003; however, as this report contains no diagnosis, clinical findings, legible signature or opinion on causation it is of little probative value.¹⁹

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment.²⁰ To establish causal relationship, appellant must submit a physician’s report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant’s medical history, state whether these employment factors caused or

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ The report of the physical therapist dated December 5, 2002 is of no probative value as a physical therapist is not a physician as defined by the Act and, therefore, is not competent to give a medical opinion. See 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

¹⁵ See *Leslie C. Moore*, 52 ECAB 132 (2000); *Linda I. Sprague*, 48 ECAB 386 (1997).

¹⁶ See *Vickey C. Randall*, 51 ECAB 357 (2000).

¹⁷ *Marylou Barragy*, 46 ECAB 781 (1995).

¹⁸ See *Merton J. Sills*, *supra* note 5.

¹⁹ *Id.*; *Trudy A. Scott*, 52 ECAB 309 (2001).

²⁰ *Donald W. Long*, 41 ECAB 142, 146-57 (1989).

aggravated appellant's diagnosed condition.²¹ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.²²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a medical condition in the performance of duty.

The Board finds that appellant has not established that he sustained an injury in the performance of duty on December 3, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 27 and 24, 2003 are affirmed.

Issued: March 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

²¹ *Id.*

²² Appellant submitted evidence subsequent to the Office's February 27, 2003 decision. As previously noted, the Board has no jurisdiction to review evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office together with a request for reconsideration under 5 U.S.C. § 8128.