



condition was caused or aggravated by appellant's federal employment but did not provide a further explanation. Appellant also submitted a December 15, 2003 letter he wrote to his supervisor noting that his back pain became severe on October 20, 2003 and that he was unable to work since that date. He attributed the deterioration of his physical condition to the demands of his employment. The employing establishment controverted the claim.

By letter dated January 7, 2004, the Office requested that appellant submit further information. On January 14, 2004 he indicated that he had symptoms of lower back pain for four years and that it had been particularly acute for the prior year. He attributed his pain to the repetitive stress caused by the bending, twisting, lifting and pushing required in his federal employment. Appellant submitted notes from the University of Florida Dunn Avenue Family Practice section, all signed by a nurse practitioner. These include a June 26, 2003 order for physical therapy for thoracic and lumbar pain, a note dated September 22, 2003 indicating that appellant needed a thoracic spine and lumbosacral spine series and a certification of Health Care Provider dated October 31, 2003, indicating that appellant had chronic back pain and headaches.

In a letter dated February 5, 2004, the employing establishment indicated that appellant had resigned effective January 6, 2004. The employing establishment noted that limited-duty work within his medical restrictions was available.

By decision dated February 13, 2004, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury. It found that the medical evidence did not provide a factual medical history relating his condition to the alleged employment incidents and noted there was not a secure diagnosis.

By letter dated June 28, 2004, appellant requested reconsideration. She submitted a May 13, 2004 decision by the Social Security Administration denying his claim for disability retirement benefits and correspondence regarding the Family Medical Leave Act. Appellant submitted a November 6, 2003 chest x-ray that was interpreted by Dr. James Walroth, a Board-certified specialist in nuclear medicine, as showing no acute disease of the chest. In a November 25, 2003 x-ray report, Dr. Walroth indicated that appellant was status postposterior fusion of L5-S1 and that alignment and position were unremarkable.

Appellant also submitted a patient history form he completed on December 1, 2003 and various laboratory reports from Dunn Avenue Family Practice center. He also provided copies of progress notes from the center dated from September 22 to December 15, 2003. In a note dated June 26, 2003, Dr. Kevin W. Peterson, a Board-certified family practitioner, indicated that he was treating appellant for arthralgias, chronic headaches, low back pain/status postlumbar fusion, chest pain with exertion and abnormal electrocardiogram. In a September 22, 2003 note, a physician treated appellant for thoracic and lumbosacral back pain with radiculopathy, hyperlipidemia, benign essential hypertension, elevated blood sugar and atypical chest pain. In a report dated October 30, 2003, Dr. Malgorzata Kaluza, a Board-certified family practitioner, indicated that appellant was being treated for benign essential hypertension, hyperlipidemia, history of elevated blood sugar, chronic lumbosacral back pain with thoracic back pain, spondylolisthesis, radiculopathy and chronic nonmigranous headaches. In a November 10, 2003 report, Dr. Peterson indicated that appellant was being treated for benign essential hypertension, chronic back pain and radiculopathy. Finally, in a December 15, 2003 note, Dr. Charles Haddad,

a family practitioner, indicated that he treated appellant for benign essential hypertension, headaches, chronic back pain, history of spondylolisthesis, benign essential hypertension and abnormal chest x-ray with history of chest pain.

By decision dated August 12, 2004, the Office denied modification of the February 13, 2004 decision. It noted that the conditions of spondylolisthesis and radiculopathy had been diagnosed but the medical evidence did not establish that these conditions were causally related to his traumatic injury claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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 the applicable time limitation 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.<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "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 or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>3</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup> The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift.<sup>5</sup>

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.<sup>6</sup> To establish causal relationship, appellant must submit a physician's report in

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> See *Tracey P. Spillane*, 54 ECAB \_\_\_\_ (Docket No. 02-2190, issued June 12, 2003); *Deborah L. Beatty*, 54 ECAB \_\_\_\_ (Docket No. 02-2294, issued January 15, 2003).

<sup>4</sup> *Id.*

<sup>5</sup> Compare 20 C.F.R. § 10.5(q) (an occupational disease is a condition produced by the work environment over a period longer than a single workday or shift) with 20 C.F.R. § 10.5(ee) (a traumatic injury is a condition caused by an event or series of events that occur within a single workday or shift). See also *Richard D. Wray*, 45 ECAB 758 (1994).

<sup>6</sup> *Manuel Gill*, 52 ECAB 282, 287 (2001).

which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>7</sup>

### ANALYSIS

Appellant submitted evidence from Dr. Kaluza, who diagnosed spondylolisthesis and radiculopathy. However, appellant has not submitted sufficient medical evidence relating his diagnosed conditions to the alleged October 20, 2003 incident. Dr. Kaluza did not relate appellant's medical conditions to the employment incident of October 20, 2003. Dr. Peterson indicated in his reports that appellant was diagnosed with low back pain and chest pain on exertion. However, he did not explain how the employment incident caused or contributed to any of the listed medical conditions. Dr. Haddad indicated that appellant was treated for chronic back pain but also did not relate it with the October 20, 2003 employment incident.<sup>8</sup> Appellant must provide medical evidence that his condition is causally related to the employment injury.<sup>9</sup> The Board notes that the September 22 and November 24, 2003 notes from the Dunn Avenue Family Practice do not contain legible signatures. The Board has held that reports which lack a legible signature and cannot be properly identified are not considered probative evidence.<sup>10</sup> The notes that were signed only by the nurse practitioner, do not constitute probative medical opinion.<sup>11</sup> Dr. Bahri merely checked a box indicating that appellant's condition was caused or aggravated by his employment but he provided no further explanation on the issue of causal relation. The Board has held that checking a box "yes" on a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>12</sup> Appellant has failed to submit sufficient rationalized medical evidence establishing a causal relationship between his claimed condition and the October 20, 2003 employment incident. He has failed to meet his burden of proof that he sustained an injury in the performance of duty as alleged.

### CONCLUSION

The Board finds that the Office properly denied appellant's claim and he failed to establish that he sustained an injury in the performance of duty on October 20, 2003.

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<sup>7</sup> *Calvin E. King*, 51 ECAB 394, 401 (2000).

<sup>8</sup> On appeal, appellant alleges that the Office never requested that he provide information with regard to causal relationship. However, in the Office's letter to appellant dated January 7, 2004 it clearly asked appellant to have his physician indicate and explain whether appellant's diagnosed condition was caused or aggravated by the claimed injury. This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(a).

<sup>9</sup> *Elaine Pendleton*, *supra* note 1.

<sup>10</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>11</sup> *See Robert J. Kistynen*, 44 ECAB 227 (1992).

<sup>12</sup> *Calvin E. King*, *supra* note 7; *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 12 and February 13, 2004 are affirmed.

Issued: February 17, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member