

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

BRUCE W. FREEMAN, Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Leavenworth, KS, Employer**

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**Docket No. 05-616
Issued: June 15, 2005**

Appearances:
Bruce W. Freeman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 18, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 11, 2005, finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

FACTUAL HISTORY

On September 23, 2004 appellant, then a 52-year-old labor leader, filed an occupational disease claim alleging that he sustained a repetitive motion condition in his wrist due to his duties as a tractor operator and grass cutter. He indicated that he first became aware of the injury and its relation to his work on September 20, 2004. Appellant did not stop work.

In support of his claim, appellant submitted a September 27, 2004 work release form, from a healthcare provider, whose signature is illegible, who advised that appellant could return to work on September 27, 2004. He indicated that appellant should wear a splint and advised restrictions of no lifting, no pushing or pulling over 5 pounds with the right wrist for 14 days. Appellant also advised no use of the right hand for seven days. He also submitted a physician's report form, which was incomplete. Additionally, appellant submitted a September 27, 2004 report, from a nurse, on behalf of Dr. Chet Strehlow, a Board-certified family practitioner, which was unsigned. The report contained a diagnosis of right wrist tendinitis.

By letter dated November 8, 2004, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that the physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information. In an undated response, received by the Office on December 16, 2004, appellant described the circumstances surrounding his claimed injuries. He indicated that he slipped and fell on his wrist while loading and unloading lawnmowers from a trailer.¹

By decision dated January 11, 2005, the Office denied appellant's claim. The Office found that the evidence supported that the claimed events occurred; however, appellant failed to submit the necessary medical evidence in support of his claim. The Office noted that the only medical evidence submitted, was not signed by a qualified physician.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.⁴

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

¹ Much of appellant's statement is not legible.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

condition is causally related to the employment factors identified by the claimant. 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. 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.⁵

ANALYSIS

The Office found that appellant had established that he was operating a tractor and lawn mower. However, appellant submitted insufficient medical evidence to establish that he sustained a wrist condition that was caused or aggravated by the activities of using the lawnmower or any other specific factors of his federal employment.

While appellant submitted some evidence from a health care provider, this evidence consists of a nurse's note dated September 27, 2004 and another report of the same date from a provider whose signature is illegible. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.⁶ Additionally, although the note contains a physician's name, it was unsigned by a physician. Unsigned reports do not constitute probative medical evidence as the absence of a signature does not identify the preparer as a physician.⁷ Thus, these notes and reports do not constitute medical evidence. Furthermore, to the extent that the September 27, 2004 report with an illegible signature was signed by a physician, the Board notes that this report does not specifically address whether any factors of appellant's employment caused his diagnosed condition. Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

⁵ *Id.*

⁶ See *Jan A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

⁷ See *Merton J. Sills*, 39 ECAB 572 (1988).

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

As there is no competent medical evidence explaining how appellant's employment duties caused or aggravated a wrist condition, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2005 is affirmed.

Issued: June 15, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member