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

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| **D.R., Appellant** | ) | |
| **and** | ) | |
| **DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, Washington, DC, Employer** | ) | **Docket No. 06-1978**<br>**Issued: December 13, 2006** |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On August 23, 2006 appellant filed a timely appeal from a July 7, 2006 decision of the Office of Workers' Compensation Programs which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision.

### ***ISSUE***

The issue is whether appellant met his burden of proof in establishing that he sustained a compensable injury in the performance of duty on April 17, 2006.

### ***FACTUAL HISTORY***

On April 17, 2006 appellant, then a 45-year-old produce inspector, filed a claim alleging that he sustained an injury that day, when he tripped and fell backwards while lifting a container of watermelons. His supervisor noted that he stated that "the wrist had been sore for a couple of weeks due to a 'tussle' at home with his son." Appellant stopped work on the date of the injury.

After receiving appellant's claim form, the Office sent him a letter dated May 30, 2006. It advised him to submit additional medical and factual evidence to meet his burden of proof. In support of his claim, appellant submitted an undated personal statement, a referral form from Debra Javins, P.A., a physician's assistant at Kaiser Permanente, a "Verification of Treatment" note from Dr. Norris L. Horwitz, a Board-certified internist with Kaiser Permanente and a "Verification of Treatment" note from Ms. Javins.

In his undated statement, appellant wrote that he fell backwards while lifting a 60- to 70-pound container of watermelons above his head. He stated that "[f]alling with the weight of the watermelon supported by my hands was the cause of injury." Ms. Javins' note, signed June 1, 2006, referred to appellant's injury as work related. Dr. Horwitz's April 28, 2006 note merely stated that appellant "[h]as had a disability: injury to wrists," and was disabled from April 27 through May 7, 2006. The referral form, signed by Ms. Javins and dated June 2, 2006, stated that appellant had "bilateral de Quervain's tenosynovitis."

On July 7, 2006 the Office denied appellant's claim on the grounds that the medical evidence in the record was insufficient to establish a causal connection between his wrist condition and his work.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.[3] To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[4]

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. 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.[5] Second, the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Donald W. Long*, 41 ECAB 142 (1989).

[4] *Id.*

[5] *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

## ***ANALYSIS***

The Board finds that the evidence supports that the April 17, 2006 incident occurred. However, appellant failed to meet his burden of proof in establishing a causal connection between his claimed left arm trauma and his employment. The medical evidence does not include a well-rationalized narrative explanation of how appellant's work caused his injury, authored by a qualified physician.

Much of appellant's supporting evidence submitted from his healthcare provider was from Ms. Javins, a physician's assistant. The Board has held that reports by a physician's assistant do not constitute medical evidence, as a physician's assistant is not a "physician" as defined by the Act.[11] The Act defines "physicians" as including "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."[12] Therefore, Ms. Javins' reports do not constitute competent medical evidence.

Dr. Horwitz's April 28, 2006 note, while competent medical evidence, does not address how and why appellant's wrist condition was caused or aggravated by the April 17, 2006 incident. Dr. Horwitz did not even diagnose any particular condition, noting only an injury to the wrists. Consequently, this report is insufficient to establish the claim as Dr. Horwitz did not explain how the specific employment incident of April 17, 2006 caused or aggravated appellant's wrist condition.

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[6] *Id.*

[7] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *Judy C. Rogers*, 54 ECAB 693 (2003).

[11] *See George H. Clark*, 56 ECAB ___ (Docket No. 04-1572, issued November 30, 2004).

[12] 5 U.S.C. § 8101(2).

Accordingly, the Board finds that the medical evidence in the record does not suffice to support appellant's allegation that his injury was work related.[13]

## ***CONCLUSION***

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 7, 2006 is affirmed.

Issued: December 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[13] After receiving the Office's decision dated July 7, 2006 and on appeal, appellant submitted three additional notes from Kaiser Permanente. The additional notes are new evidence, as they were not part of the case record when the Office rendered its decision and, therefore, the Board may not consider them on appeal. 20 C.F.R. § 501.2(c).