

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

MICHAEL H. ANAGNOS, Appellant)

and)

**DEPARTMENT OF TRANSPORTATION,)
TRANSPORTATION SECURITY)
ADMINISTRATION, BELLINGHAM)
INTERNATIONAL AIRPORT, Bellingham, WA,)
Employer**)

**Docket No. 06-1031
Issued: July 27, 2006**

Appearances:
Michael H. Anagnos, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated March 23, 2005 and March 10, 2006, denying his claim for a back injury. 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 sustained a back injury on March 5, 2003 in the performance of duty.

FACTUAL HISTORY

On March 25, 2003 appellant, then a 45-year-old transportation security screener, filed a traumatic injury claim alleging that he sustained a back injury, a disc bulge at L4-5 and L5-S1, on March 5, 2003 when he was attending a meeting regarding his proposed termination. Ann

Killian, a Deputy Federal Security Director and his supervisor, grabbed appellant's left upper arm as he was about to open her office door and 'jerked' him back. He alleged that Robert Butler, his attorney, was not allowed to attend the meeting and had to wait outside Ms. Killian's office. Appellant alleged that he was told to sign a document without being allowed to read it. He read the document, which indicated that he wished to resign or retire and stepped outside the office to consult with Mr. Butler, who recommended that he decline to sign it.

Appellant was offered a second document and Melvin Jackson, Acting Assistant Federal Security Director of Screening at the airport, told him that he would not be allowed to consult his attorney. He believed that the document contained false allegations about him and he walked to the door with the document to consult with Mr. Butler. His hand was on the door handle when Ms. Killian yelled, "No" and grabbed his upper left arm with both her hands, twisted his upper body to the left and pulled him backwards a step or two. She stated, as she was pulling him, "You are not going anywhere with that, you bastard." Mr. Jackson told Ms. Killian to release him. Appellant stated that, as she jerked and twisted his body, he felt a sudden sharp pain in the center of his lower back. Ms. Killian removed her right arm from his left arm, moving it across his back and placed it on the door. As she pushed the door to close it, she struck the back of his head with her arm, pushing the right front side of his head into the door. With Ms. Killian's left hand on his left arm and her right hand on the door, appellant stepped back, opened the door and walked out of the office. Mr. Butler read the document and told him to return it and tell Ms. Killian and Mr. Jackson that the meeting was over and they should schedule an appointment if they wished to continue the meeting at a later date. Appellant told Ms. Killian and Mr. Jackson that they could mail his termination papers to him. Ms. Killian told him to return his uniforms. The day after the incident appellant saw bruises and finger marks on his arm. He filed a police report on March 25, 2003 and indicated that the delay in filing was due to his wish to consult his attorney.

In a June 25, 2003 statement and in her statements to the police, Ms. Killian indicated that the purpose of the March 5, 2003 meeting with appellant was to serve him with a letter of termination issued by the Director of Employee Relation Services at the employing establishment headquarters in Washington, DC. She stated that appellant was arrested on February 5, 2003 for allegedly firing shots at a trespassing vehicle on his property, nearly striking the vehicle's seven-year-old passenger in the head. The county prosecutor's office charged him with second-degree assault and firearms violations. The termination letter was issued to appellant because of this shooting incident. Prior to the March 5, 2003 meeting with him, Mr. Jackson met with Mr. Butler and explained the termination letter in detail and the process that would be followed in serving appellant with the letter. It was agreed that Mr. Butler would wait in the outer office and not be present for the signing of the letter. Ms. Killian stated that at the March 5, 2003 meeting appellant was adversarial and defensive. Appellant was invited to take a seat but refused. He was given a copy of the termination letter, asked to read it and sign it to acknowledge receipt. Appellant became agitated and stated that he was going to show it to Mr. Butler. Mr. Jackson explained that the letter was an original document and could not be taken from the office until it had been officially served by having him sign the letter to indicate receipt. Appellant began to walk toward the door and Ms. Killian placed her hand on the closed door to keep him from leaving the office with an original document that was the

property of the employing establishment.¹ Disregarding her gesture, he pulled open the door and exited the office. When appellant opened the door, Ms. Killian offered no resistance and stepped back. After consulting with Mr. Butler, appellant entered the office, threw the letter on the floor and advised that he would not sign anything. Ms. Killian and Mr. Jackson signed the letter and service of the termination letter to appellant was later accomplished through certified mail delivery. On April 2, 2003 Ms. Killian learned that he had filed a police report alleging that she physically and verbally assaulted him on March 5, 2003. She denied that she had any physical contact with him on March 5, 2003 or that she used profanity. Ms. Killian noted that appellant filed his allegation of assault with the police five days after she submitted a written statement concerning statements he made to her concerning the February 4, 2003 shooting incident to the sheriff's office. The Office of Chief Counsel at the employing establishment had asked her to provide the statement to the sheriff's office.

In a police report dated April 8, 2004, the investigating detective stated, "After a thorough investigation into the purported incident [on March 5, 2003], it is my conclusion that there was no probable cause to believe that any assault had occurred."

In a May 7, 2003 report, Dr. Michael S. Lawrence, an attending Board-certified neurosurgeon, described the incident on March 5, 2003 involving Ms. Killian, provided findings on physical examination and diagnosed a disc herniation and bulge at L4-5 and moderate stenosis at L4-5.

In a May 27, 2003 report, Dr. Kenneth H. Spady, an attending family practitioner, indicated that he first examined appellant on March 27, 2002 and was told that he was jerked by his left arm by Ms. Killian which torqued his body and caused right buttock pain and a weak feeling in his right lower extremity within a few hours of the incident. The diagnosis was an acute low back strain with degenerative disc disease and a herniated disc. Dr. Spady indicated that appellant's back conditions were probably caused by the March 5, 2003 incident.

By decision dated July 1, 2003, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the March 5, 2003 incident occurred as alleged.

In a statement dated July 3, 2003 and in his statement to the police, Mr. Jackson indicated that he was sent to the Bellingham Airport to assist Ms. Killian with the service of termination papers on appellant because she had not participated in a termination procedure before. He declined appellant's request to have Mr. Butler present at the meeting, saying that an attorney was not required at this meeting. Mr. Jackson explained to him that, by signing the termination letter, he was merely acknowledging receipt of the document, not that he agreed with the termination action. He told appellant that he could show the letter to Mr. Butler after he signed the original letter and received a copy. Appellant picked up the original document from a desk and stated, "You mean to tell me that I can't show these papers to my attorney and he's standing right out there?" Mr. Jackson advised that he could show his copy of the letter to Mr. Butler after he signed the original. Appellant was reading the letter when he suddenly walked toward the closed office door. As he reached for the door, Ms. Killian pushed on the door to try to keep

¹ Ms. Killian indicated that, if appellant had signed the original termination letter, a photocopy of the letter would have been provided to him.

him from leaving the office and told him not to leave. Mr. Jackson stated that he told her, "Let him go," not "Let go of him," as appellant alleged. He stated that at no time did he see Ms. Killian grab or even touch appellant. Appellant opened the door, pushing Ms. Killian back and proceeded out the door toward Mr. Butler. After talking to Mr. Butler, he returned to the office with the letter but left without signing it. Mr. Jackson stated that appellant arrived at the meeting in an angry and confrontational mood and departed in the same mood.

Appellant requested an oral hearing that was held May 6, 2004.

By decision dated July 20, 2004, an Office hearing representative affirmed the July 1, 2003 decision.

Appellant requested reconsideration and submitted additional evidence.

In a September 9, 2004 report, Dr. Lawrence stated:

"I have reviewed my [May 7, 2003] letter. It is clear from the information in that letter that [appellant's] back and leg problems at that time were felt to be due to a central disc herniation and bulge at the L4-5 level ... and that this condition became symptomatic as a direct result of an injury that [he] sustained on March 5, 2003."

In an affidavit dated October 19, 2004, Mr. Butler indicated that on March 5, 2003 appellant was to be terminated by the employing establishment because he was charged with a felony in connection with the February 4, 2003 shooting incident. He stated that Mr. Jackson would not allow him to be present during service of the termination letter because the meeting was merely to have appellant sign the letter, acknowledging receipt. Mr. Butler advised Mr. Jackson that appellant would not resign from his position and there should be no discussion of resignation. He explained to appellant that he would be asked to sign the termination letter to show that he had received it. Mr. Butler stated that the office had large glass windows and he could observe what took place but not hear the conversation. He saw appellant become agitated concerning a document he was given and he exited the room to show Mr. Butler the document. It indicated that appellant was resigning or retiring. He advised him not to sign the document and he went back into the office. A different document was presented to appellant, which also caused him to become agitated. Mr. Butler stated:

"Because of the door post, I could not directly see contact between Ms. Killian and [appellant], but based on what I saw, I assumed Ms. Killian had grabbed at [appellant] to detain him and/or retrieve the papers that [he] brought out of the room for my review. [He] was very agitated and said something to the effect of, 'I can[not] believe this. You need to read this, it says I admitted the crime to her.' Then he added something like 'did you see her grab me? Can she grab me like that?' At the time of the scuffle, I could hear [Mr.] Jackson saying something that appeared to be directed to [Ms.] Killian.... I told [appellant] that I did not need to read [the letter] and that we should simply end the meeting and leave. I instructed [appellant] to return the documents which he did in a calm manner and we left

with [Ms.] Killian yelling at us that [he] would receive his termination in the mail and he had better return all his uniform[s] by close of business.”

* * *

“I did not have a vantage point to directly see Ms. Killian assault [appellant]. What I did observe was a motion and a movement by [her] toward [him] in what appeared to me to be an effort to deny [him] from leaving the office with the documents.”

Appellant submitted a May 8, 2004 newspaper article regarding changes in management at the employing establishment.

By decision dated March 23, 2005, the Office denied modification of its prior decisions.

Appellant filed an appeal with the Board.² The Board remanded the case for reconstruction and proper assemblage of the record and an appropriate decision.

By decision dated March 10, 2006, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “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 actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident. Physical contact by a coworker may give rise to a compensable employment factor. *See Karen E. Humphrey*, 44 ECAB 908 (1993); *Constance G. Patterson*, 41 ECAB 208 (1989).

² Docket No. 05-1182, order remanding case issued November 1, 2005.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁶ *Shirley A. Temple*, 48 ECAB 404 (1997).

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.⁷

ANALYSIS

The Board finds that the evidence in this case is insufficient to establish that the incident on March 5, 2003 occurred in the manner alleged by appellant.

Appellant alleged that he sustained a back injury when Ms. Killian grabbed him and twisted his upper body at the March 5, 2003 meeting when he attempted to exit the office to speak with his attorney about a document and that she said, "You are not going anywhere with that, you bastard." He alleged that Ms. Killian struck the back of his head and pushed his head into the door when she reached to close it. She and Mr. Jackson disputed appellant's description of the events on March 5, 2003. They indicated that he attempted to leave the room with the original termination letter and Ms. Killian placed her hand on the door, indicating to appellant that he should not leave with the original document. They denied that Ms. Killian touched him when he opened the door and exited. The police report regarding the March 5, 2003 events stated that, after a thorough investigation, which included interviews with appellant, Ms. Killian and Mr. Jackson, there was no probable cause to believe an assault took place.

Appellant submitted an affidavit from his attorney, Mr. Butler, in support of his claim. However, he indicated that he did not see any contact between Ms. Killian and appellant and "assumed" that she had grabbed at him to keep him from leaving the room with the termination letter. Mr. Butler stated that the door post prevented him from seeing what took place and that he "did not have a vantage point to directly see" what occurred between Ms. Killian and appellant. He observed only a "motion and movement by Ms. Killian ... in what appeared to [him] to be an effort to deny [appellant] from leaving the office with the documents." The affidavit from Mr. Butler does not establish that Ms. Killian physically touched appellant and, in fact, his admittedly limited observations are consistent with the description of the events on March 5, 2003 from Ms. Killian and Mr. Jackson.

Appellant submitted a May 8, 2004 newspaper article regarding changes in management at the employing establishment. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of

⁷ Gary J. Watling, 52 ECAB 278 (2001); Shirley A. Temple, *supra* note 6.

general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.⁸

As the facts of this case do not establish that the claimed incident on March 5, 2003 occurred in the manner alleged by appellant, it is not necessary to consider the medical evidence.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a back injury on March 5, 2003 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 10, 2006 and March 23, 2005 are affirmed.

Issued: July 27, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁸ *William C. Bush*, 40 ECAB 1064 (1989).