

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

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**P.K., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
BORDER PATROL, Massena, NY, Employer**

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**Docket No. 07-709  
Issued: June 18, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 9, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 11, 2006 denial of his claim. Under 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 has established that he sustained a lower back injury while in the performance of duty on October 10, 2006.

**FACTUAL HISTORY**

On October 10, 2006 appellant, a 41-year-old border patrol agent, was conducting marine operations when the river he was monitoring became turbulent, jarring his patrol boat. Following his shift, he felt pain in his lower back. Appellant filed a claim for benefits, alleging that he sustained injury to his lower back. He submitted a Form CA-16 report from Dr. Mukta Gupta, Board-certified in internal medicine, who related that appellant injured his lower back while riding

in a boat on October 10, 2006 and diagnosed mechanical back pain. In a box asking whether the injury was caused or aggravated by employment, Dr. Gupta wrote “indeterminate.”

On November 1, 2006 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted an October 16, 2006 report from Dr. Gupta who stated the history of injury, noted findings on examination and diagnosed acute lower back pain with paraspinal muscle spasms. Dr. Gupta recommended a follow-up examination in one week. Appellant also submitted an October 16, 2006 radiography report which indicated a normal result from a lumbar radiography.

By decision dated December 11, 2006, the Office denied appellant’s claim, finding that he failed to submit sufficient medical evidence in support of his claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing that 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.<sup>2</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>3</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. 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>4</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>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

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.<sup>6</sup>

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.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on October 10, 2006 caused a personal injury and resultant disability.

The only medical documents appellant submitted were the October 16, 2006 report and October 10, 2006 form report from Dr. Gupta and the normal October 16, 2006 radiology results. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>10</sup> Dr. Gupta diagnosed mechanical back pain paraspinal muscle spasms and indicated in his October 10 and 16, 2006 reports that appellant injured his lower back while working on a patrol boat which was jostled by turbulent river waters. Although he did present a diagnosis of appellant's condition, Dr. Gupta did not adequately address how this condition was causally related to the October 10, 2006 work incident. There is insufficient probative, rationalized evidence in the record that appellant's lower back injury was work related. Therefore, he failed to provide a medical report from a physician that explains how the work incident of October 10, 2006 caused or contributed to the claimed lower back injury.

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<sup>6</sup> *Id.*

<sup>7</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> *John J. Carlone*, *supra* note 4.

<sup>10</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the October 10, 2006 work incident would have caused the claimed injury. Accordingly, he did not establish that he sustained a lower back injury in the performance of duty. The Office properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a lower back injury in the performance of duty on October 10, 2006.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 18, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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