United States Department of Labor
Employees' Compensation Appeals Board

J.N., Appellant	)	
	)	**Docket No. 07-541**
and	)	**Issued: May 8, 2007**
	)	
DEPARTMENT OF THE AIR FORCE, MISSOURI AIR NATIONAL GUARD, Jefferson City, MO, Employer	)	

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 December 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 26, 2006 which denied appellant's 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 the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a back injury in the performance of duty.

FACTUAL HISTORY

On July 31, 2006 appellant, then a 25-year-old aircraft mechanic, filed a claim alleging that, on July 25, 2006, he sustained a back injury including three bulging discs while performing his duties as an aircraft mechanic. He stopped work on July 25, 2006 and returned to a light-duty position on September 1, 2006.

In support of his claim, appellant submitted physical therapy reports from August 3 to September 12, 2006 for treatment of low back and hip pain. He also submitted a report from Paula Israel, a nurse practitioner, dated August 23, 2006. Ms. Israel treated appellant for a sore back which occurred on July 29, 2006 after lifting aircraft parts. She diagnosed herniated disc at L5-S1 with bulging discs at L3-4 and L4-5. Ms. Israel noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity and indicated that appellant was totally disabled.

By letter dated September 25, 2006, the Office advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. The Office indicated that appellant's claim was administratively handled to allow medical payments up to $1,500.00; however, the merits of the claim had not been formally adjudicated. Because it had received bills exceeding $1,500.00, appellant's claim would be formally adjudicated. The Office requested that appellant submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed back injury. No additional information was received.

In a decision dated October 26, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his back condition was caused by employment factors.

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 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. 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.[2]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

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] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The Office accepted that the July 25, 2006 lifting incident occurred as appellant alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a back injury causally related to the July 25, 2006 incident.

On September 25, 2006 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted reports from a physical therapist dated August 3 to September 12, 2006. However, the Board has held that treatment notes signed by a physical therapist are not considered medical evidence as a physical therapist is not a physician as defined under the Act.[7] Appellant also submitted an attending physician's report dated August 23, 2006 which was signed by a nurse practitioner. As noted, treatment notes signed by a nurse practitioner are not considered medical evidence as a nurse practitioner is not a physician under the Act.[8] Therefore, these reports are insufficient to establish his claim of injury.

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

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *See David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006). *See also* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[8] *See Sean O'Connell*, 56 ECAB ___ (Docket No. 04-1746, issued December 20, 2004).

his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back injury causally related to his July 25, 2006 employment incident.[10]

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2007
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

[9] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[10] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).