United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 07-1264**
	)	**Issued: September 21, 2007**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT AGENCY, Fort Carson, CO, Employer	)	

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 April 11, 2007 appellant filed a timely appeal from the March 21, 2007 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 has established that he sustained an injury in the performance of duty on April 8, 2006 as alleged.

FACTUAL HISTORY

On January 30, 2007 appellant, a 50-year-old material maintenance management specialist, filed a traumatic injury claim, Form CA-1, alleging that he injured his lower back while lifting a table as part of a quarters move in Mosul, Iraq, on April 8, 2006.

On February 16, 2007 the Office notified appellant that he had not submitted adequate medical information to establish his claim. It requested that he provide a report from a physician.

Appellant submitted a record of medical care provided by Captain Minnie Dougherty, a physician's assistant, dated April 10, 2006. Captain Dougherty reported that appellant experienced pain in his lower back after moving furniture. A medic, Adriene Jessee, stated that appellant's pain began two days earlier when he heard a pop in his back while moving furniture. Captain Dougherty stated that appellant had a history of upper back pain related to an automobile accident that occurred in the early 1990s but no history of lower back pain. On examination, she found that appellant had a decreased range of motion secondary to pain and that he had a muscle spasm on the left side that was very tender to palpitation. Captain Dougherty stated that the examination was limited because of appellant's pain and that she "consulted with Dr. Reed for possible manipulation." She diagnosed lower back sprain, provided medicine, recommended stretches and released him to work without limitations. Appellant's supervisor, Richard Chumbley, confirmed that appellant hurt his back while moving a table, but reported that he lost no time from work following the employment incident.

By decision dated March 21, 2007, the Office denied appellant's claim on the grounds that he had not established that he had sustained an injury in the performance of duty. The Office found that the April 8, 2006 incident of moving furniture occurred as alleged, but that appellant had not provided adequate medical evidence to establish a diagnosis connected to the incident. The Office stated that it had received only a diagnosis from a physical therapist,[1] which was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the

[1] It appears that the Office interpreted the designation of Captain Dougherty's rank, CPT, as "Certified Physical Therapists."

[2] 5 U.S.C. §§ 8101-8193.

[3] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury and, generally, this can be established only by medical evidence.[4]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.[5] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,[6] and must be one of reasonable medical certainty,[7] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

The Office has accepted that appellant was moving a table on April 8, 2006 in the performance of his federal duties. Therefore, the issue is whether appellant has established that he sustained an injury as a result of that incident.

The only medical evidence in the record is a treatment report prepared by a physician's assistant, Captain Dougherty, who stated that she consulted with a Dr. Reed about appellant's condition, but the record contains no diagnosis from Dr. Reed or any other physician. The Board has held that the opinions of physicians' assistants have no probative value on medical questions because a physician's assistant is not a "physician" as defined under the Act.[9]

Because appellant has submitted no probative medical evidence, the Board finds that he has not met his burden of proof in establishing that he sustained an injury causally related to the accepted employment incident of April 8, 2006.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on April 8, 2006 as alleged.

[4] *Ellen L. Noble*, 55 ECAB 530 (2004).

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

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

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

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

[9] 5 U.S.C. § 8101(2); *see also Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2007 is affirmed.

Issued: September 21, 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