

his right arm, down his left leg and back.¹ He listed the nature of the injury as “herniated disc in my back.”

By letter dated September 18, 2007, the Office instructed appellant to submit medical evidence to support his claim within 30 days. No medical evidence was submitted.

By decision dated October 22, 2007, the Office denied appellant’s claim as he submitted no medical evidence to establish that he sustained a medical condition causally related to the December 28, 2005 lifting incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that an 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. 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first 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.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to a specific condition of employment.⁶ Neither the fact that a condition became apparent during a period of employment nor appellant’s belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.

¹ The traumatic injury claim form indicates that appellant’s signature is dated August 2, 2005. This appears to be a typographical error as the alleged injury occurred on December 28, 2005 and the date of notice is listed as August 30, 2007.

² 5 U.S.C. § 8122(a).

³ *Id.*

⁴ *John J. Carlone*, 41 ECAB 345 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁶ *Katherine J. Friday*, 47 ECAB 591 (1996).

ANALYSIS

The Office accepted that the December 28, 2005 incident occurred as appellant alleged, *i.e.*, that he lifted a bag and experienced pain in his right arm, left leg and back. The issue on appeal, therefore, is whether appellant submitted sufficient medical evidence to establish that he sustained an injury as a result of this incident. Appellant failed to timely submit any medical evidence to support his claim that he sustained an injury on December 28, 2005. Therefore, he has not established a *prima facie* claim for compensation.⁷

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 his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁸ As appellant failed to submit such evidence, the Office properly denied his claim.⁹

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on December 28, 2005, as alleged.

⁷ See *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard A. Weiss*, 47 ECAB 182 (1995).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ Appellant submitted new medical evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal. See 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2007 is affirmed.

Issued: June 23, 2008
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