

trash into a dumpster on the same day. He stopped work on October 23, 2006 and returned to a light-duty assignment effective October 24, 2006.

In support of his claim, appellant submitted an October 24, 2006 report from Dr. David K. Close, a Board-certified family practitioner, who noted that appellant presented with left lumbar pain and a history of injury at work while lifting heavy boxes. Dr. Close characterized appellant's condition as an acute exacerbation of a chronic but intermittent problem. He stated that appellant's condition was aggravated by repetitive lifting on the job. Dr. Close diagnosed low back pain and noted that appellant's medical history was significant for osteoarthritis, prior herniated disc and back surgery. In an October 24, 2006 work status note, he stated that appellant was able to work with restrictions against kneeling, bending and stooping, and performing tasks on ground level.

By correspondence dated November 7, 2006, the Office requested additional information concerning appellant's claim.

In October 31 and November 14, 2006 notes, Dr. Close diagnosed low back pain but did not otherwise describe appellant's injury. In a November 14, 2006 work status note, he reiterated that appellant was able to work with restrictions.

By decision dated December 14, 2006, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence was insufficient to establish that the employment incident caused an injury.

In a December 15, 2006 note, Dr. Close again diagnosed low back pain and noted that appellant had returned to unrestricted work. Appellant also provided physical therapy notes describing his course of treatment.

On January 17, 2007 appellant requested reconsideration. In support of his reconsideration request, he provided a January 15, 2007 report from Dr. Close, who explained that appellant first presented on October 24, 2006 with a history of back injury while lifting heavy objects and depositing them in a dumpster at work on the previous day. Dr. Close noted that appellant had a history of herniated disc and back surgery but had been doing well before experiencing an exacerbation at work on October 23, 2006. He diagnosed low back pain and advised that he released appellant to full duty effective December 15, 2006.

By decision dated January 30, 2007, the Office denied modification of its December 14, 2006 decision, finding that the new medical evidence was insufficient to warrant modifying its previous denial of appellant's traumatic injury claim.

In a March 7, 2007 statement, the employing establishment supported appellant's claim that he was injured at work while lifting objects into a dumpster which was situated at a level higher than the dock. It noted that appellant experienced immediate low back and left leg pain after lifting the trash and that he sought medical attention the following day after experiencing an increase in his pain overnight. The employing establishment explained that it had since attempted to rectify the situation by lowering the level of the dumpster, but that this did not change the fact that appellant was injured at work.

By correspondence dated March 12, 2007, appellant requested reconsideration. In support of his request, he provided a December 27, 2006 report from Dr. Close, which was similar to his January 15, 2007 report, as well as copies of Dr. Close's October 31 and December 15, 2006 reports.

By decision dated May 9, 2007, the Office denied modification of its previous denials of appellant's traumatic injury claim.¹

On September 10, 2007 appellant requested reconsideration of the Office's January 30, 2007 decision. In a September 7, 2007 letter, he explained that Dr. Close had refused to change his diagnosis, stating that he diagnosed low back pain for all types of back conditions and had never had a claim denied. Appellant also noted that a coworker had recently had a claim accepted for a similar injury and diagnosis.

By decision dated October 5, 2007, the Office denied appellant's request for reconsideration without conducting a merit review on the grounds that the request did not show that the Office erroneously applied or interpreted a point of law, advance a new and relevant legal argument or include new and relevant evidentiary submissions.

LEGAL PRECEDENT -- ISSUE 1

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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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 actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must

¹ The Office decision stated that the grounds for denial were "modified from failure to establish causal relationship to fact of injury medical." However, the Board notes that the basis of the denial was essentially the same as in the Office's previous decision -- failure to establish to submit medical evidence establishing that the employment incident caused an injury.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. 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.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant⁸ and must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on October 23, 2006. The evidence establishes that appellant was lifting trash into a dumpster as alleged on October 23, 2006. However, appellant has not met his burden of proof because the medical evidence is insufficient to establish that lifting trash on October 23, 2006 caused an injury.

In support of his claim, appellant submitted several notes and reports from Dr. Close, but the Board finds that these reports were insufficient to demonstrate a causal relationship between the October 23, 2006 employment incident and appellant's diagnosed low back pain. On October 24, 2006 Dr. Close stated that appellant sustained an acute exacerbation of a preexisting and chronic low back condition. Although he supported causal relationship, stating that the injury occurred at work while appellant was lifting boxes, he did not provide a full explanation with detailed rationale describing the causal relationship between the incident and the diagnosed condition.¹¹ Dr. Close did not explain how the manner in which appellant lifted the items caused the exacerbation and did not provide physical details of the incident. The Board finds that he has not provided a sufficiently detailed and rationalized medical opinion explaining the precise nature of appellant's injury. Moreover, the Board notes that Dr. Close diagnosed low back pain. The Board has previously held that pain is a symptom, not a diagnosis.¹² Therefore, Dr. Close's

⁶ *Id.*

⁷ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹¹ In order to be considered rationalized medical evidence, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Victor J. Woodhams*, *supra* note 3; *Steven S. Saleh*, 55 ECAB 169, 172 (2003). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

¹² *Robert Broome*, 55 ECAB 0493 (2004), *citing John L. Clark*, 32 ECAB 1618 (1981).

October 24, 2006 report is insufficient to establish that appellant sustained a traumatic injury in the performance of duty.

In a January 15, 2007 report, Dr. Close again addressed causal relationship, explaining that appellant had experienced an exacerbation of his chronic low back condition while lifting boxes at work. He noted that appellant had a history of a herniated disc and back surgery but had been doing well prior to his exacerbation and he reiterated that appellant's injury occurred at work. However, Dr. Close did not provide physical details or a rationalized medical explanation of how appellant's injury occurred, and he again diagnosed low back pain and no other condition. As noted, a claimant must provide a detailed medical opinion, fortified with rationale, to establish his claim. Although Dr. Close supported that appellant's injury occurred at work, his explanation and rationale were insufficiently detailed to establish appellant's claim.

Appellant submitted additional notes and reports from Dr. Close such as his October 31, November 14 and December 15, 2006 notes. However, he did not specifically address causal relationship in these reports, whether the October 23, 2006 work incident caused an injury. The Board has held that a physician's report which does not include an opinion on causal relationship is of limited probative value on that issue.¹³ Consequently, these reports are insufficient to establish appellant's claim.

Appellant also provided numerous physical therapy notes detailing his course of treatment. However, the Board has held that causal relationship is a medical issue which must be proven by the submission of rationalized medical evidence from a qualified physician.¹⁴ A physical therapist is not a physician, and therefore appellant's physical therapy notes do not constitute rationalized medical opinion evidence and are not probative in establishing that he sustained a traumatic injury in the performance of duty.¹⁵ The employing establishment also provided a statement supporting that appellant's injury occurred in the performance of duty. However, as noted above, causal relationship is a medical issue which must be proven by medical evidence.¹⁶ Therefore the Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury on October 23, 2006.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in using this discretion.¹⁷ The regulations

¹³ See *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁴ *Paul E. Thams*, 56 ECAB 503, 509 (2005).

¹⁵ *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

¹⁶ *Supra* note 14.

¹⁷ 20 C.F.R. § 10.606(b)(2) (1999).

provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”¹⁸

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.²⁰

ANALYSIS -- ISSUE 2

On September 10, 2007 appellant requested reconsideration of the Office's May 9, 2007 decision. In a September 7, 2007 letter, he stated his disagreement with the Office's prior decisions, explaining that Dr. Close had told him that he diagnosed low back pain for all types of back conditions and had never had a claim denied as a result and refused to change the diagnosis. Appellant also stated that a coworker had recently experienced a similar injury and his claim was accepted. He did not provide additional medical or factual evidence in support of his reconsideration request.

The Board finds that the Office properly denied appellant's reconsideration request without conducting a merit review. In his September 7, 2007 correspondence, appellant neither asserted that the Office misapplied or misinterpreted a specific point of law, nor raised new and relevant legal arguments. His explanation that Dr. Close had refused to change the diagnosis because he diagnosed low back pain for all types of back injuries and his statement that a coworker had recently had a claim accepted for a similar injury are not relevant to the reason appellant's claim was denied; namely, that Dr. Close failed to provide a rationalized medical opinion on causal relationship. Appellant raised no legal arguments with a color of validity and therefore he did not meet either of the first two regulatory criteria requiring the Office to reopen his claim for a merit review. Additionally, he presented no new and relevant medical evidence and therefore did not meet the third regulatory criteria justifying a merit review. Accordingly,

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.608(b) (1999).

²⁰ *Annette Louise*, 54 ECAB 783 (2003).

the Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on October 23, 2006 and that the Office properly denied his September 10, 2007 request for reconsideration without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the October 5, May 9 and January 30, 2007 and December 14, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 19, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board