

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

D.M., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 09-1047
TRANSPORTATION SECURITY)	Issued: December 1, 2009
ADMINISTRATION, DULLES)	
INTERNATIONAL AIRPORT, Dulles, VA,)	
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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 14, 2009 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated October 6, 2008 and January 14, 2009 denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this claim.

ISSUE

The issue is whether appellant has established that he sustained an injury on August 27, 2008, as alleged.

FACTUAL HISTORY

On August 28, 2008 appellant, then a 33-year-old supervisory transportation security officer (screener), filed a traumatic injury claim for a back injury. He alleged that, on August 27, 2008, while lifting a bag to place it on the entry belt, he felt and heard a loud popping sound and

felt immediate pain in his back. By letter dated September 3, 2008, the Office told appellant that it needed further information in support of his claim. Appellant did not file a timely response.

By decision dated October 6, 2008, the Office denied appellant's claim. It found that the information was insufficient to establish that an event occurred as alleged. The Office further denied appellant's claim as the medical evidence did not provide a diagnosis which could be connected to the claimed event.

On November 10, 2008 appellant requested reconsideration. In support thereof, he submitted a statement wherein he reiterated that he was lifting an extremely heavy bag to place it on the entry belt to x-ray for security and that at that time he heard a loud popping sound and felt immediate pain in his back. Appellant noted that he was out of work for two days as a result of this incident.

Appellant also submitted a note from Reston Hospital Center which indicated that he was seen on August 27, 2008, complaining that he sustained an injury while lifting a suitcase at the airport. Dr. Thomas Fuchs, Board-certified in emergency medicine, diagnosed local injury affecting the low back. He noted that there was no radiographic evidence of an acute fracture. Dr. Fuchs prescribed appellant vicodin and discharged him. Appellant also submitted the results of the x-rays taken on that date that were interpreted by Dr. Stuart A. Fruman, a Board-certified radiologist, as "radiographically normal lumbosacral spine." He also submitted the nurse's notes from this visit.

By decision dated January 14, 2009, the Office found that appellant established that the incident occurred as alleged. However, it denied his claim as the medical evidence was insufficient to support that there was a diagnosed condition connected to this accepted incident. Therefore, the Office found that the evidence was insufficient to modify the decision of October 6, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.²

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 she actually experienced the employment incident at

¹ 5 U.S.C. § 8122(a).

² *Id.*

the time, place and in the manner alleged.³ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

Causal relationship is a medical issue⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

In the instant case, appellant filed a claim alleging that he was injured on August 27, 2008 when he lifted a heavy bag to place on the entry belt to x-ray for security and heard a loud popping sound with immediate pain in his back. The Office accepted that the August 27, 2008 incident occurred at the time, place and in the manner alleged. The Board must therefore consider on appeal whether appellant sustained an injury causally related to the August 2, 2008 incident.

In support of his claim, appellant submitted hospital records from his visit on the date of the incident, August 27, 2008. However, no physician listed a specific diagnosis. Dr. Fuchs diagnosed a local injury affecting the low back, but this diagnosis is better characterized as symptoms and does not constitute a firm medical diagnosis.⁹ Dr. Fruman interpreted appellant's x-ray as evincing a "radiologically normal lumbar spine." Therefore, no medical diagnosis of a specific injury has been established. Furthermore, these records do not explain how the employment-related incident caused appellant's condition.¹⁰ Finally, the Board notes that the nurse's notes do not constitute probative evidence because a nurse is not defined as a physician under the Act.¹¹ Therefore, the nurse's notes do not constitute competent evidence to support appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of

³ *John J. Carlone*, 41 ECAB 345 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁰ *Jennifer Aterkson*, 55 ECAB 317 (2004).

¹¹ *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007).

employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹² The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹³ or that the work activities produce symptoms revelatory of an underlying condition¹⁴ does not raise an inference of causal relationship between the two. As appellant failed to provide medical evidence establishing the causal relationship between his back pain and his employment, the Office properly denied the claim.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on August 27, 2008 causally related to his federal employment

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 14, 2009 and October 6, 2008 are affirmed.

Issued: December 1, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹² *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹³ *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁴ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).