



Appellant submitted a November 6, 2007 treatment note from a physician's assistant indicating that appellant had been treated at an emergency room that day and advising that he should follow up with occupational health on November 7, 2007.

On November 15, 2007 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. In particular, it requested a physician's report with a diagnosis, description of findings and medical explanation regarding causal relationship.

In an undated Form CA-16, attending physician's report, Dr. Deborah Brunson, an allergist and immunologist, noted that appellant jumped to avoid getting hit by an automobile and sustained L5 and cervical strain.<sup>1</sup> She diagnosed muscle strain and neuralgia of the legs. Dr. Brunson checked a box "no" indicating that appellant's condition was not caused or aggravated by the employment activity described. She further indicated that appellant was totally disabled from November 6 to December 6, 2007. On November 20, 2007 Dr. Brunson stated that appellant was injured at work on November 6, 2007. She further noted that she should have checked the box "yes" on Form CA-16 to indicate that appellant's condition was caused by his employment activity. In a November 8, 2007 duty status report, Dr. Brunson indicated that appellant had sustained neck spasms and injury to his lower back due to a motor vehicle accident. She advised no work until further notice. In a report of the same date, Dr. Brunson noted appellant's complaint of low back pain and cervical strain. She indicated that appellant had jumped to avoid an automobile and twisted his back and cervical spine.

By decision dated December 26, 2007, the Office denied appellant's claim for compensation finding that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

Appellant subsequently submitted additional medical evidence. On May 6, 2008 he requested an oral hearing.<sup>2</sup>

By decision dated June 19, 2008, the Office denied appellant's request for an oral hearing finding that he did not file his request within 30 days. It also exercised its discretion and determined that appellant's case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim, including the fact that the individual is

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<sup>1</sup> The employing establishment issued the Form CA-16 to appellant on November 6, 2007 but Dr. Brunson did not provide the date on which she issued the report. Dr. Brunson noted first examining appellant on November 6, 2007 and listed dates of treatment as November 6 and 8, 2007, and weekly.

<sup>2</sup> The record reflects that appellant asserted that he had requested an oral hearing prior to May 6, 2008. However, the record does not contain any requests for an oral hearing prior to this date.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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 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 on a traumatic injury or an occupational disease.<sup>4</sup>

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 or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The record reflects that, on November 6, 2007, appellant jumped to avoid an automobile while in the performance of duty. However, the medical evidence does not establish that jumping to avoid an automobile caused or aggravated his claimed lower back and neck injury.

In a November 6, 2007 Form CA-16, Dr. Brunson noted that appellant jumped to avoid getting hit by an automobile and sustained an L5 strain, a cervical strain and neuralgia of the legs. She also checked a box “no” indicating that appellant’s condition was not caused by an employment activity. On November 20, 2007 Dr. Brunson clarified her opinion on causal relationship noting that she mistakenly checked the “no” box and had intended to answer “yes” indicating that appellant’s condition was caused by his employment activity. While her opinion supports causal relationship, this opinion has little probative value as it is without medical

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<sup>4</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

rationale.<sup>7</sup> For example, Dr. Brunson did not explain the reasons why the act of jumping by appellant would have caused or aggravated the diagnosed medical conditions.

Likewise, Dr. Brunson's other reports do not provide medical rationale explaining why appellant's jumping caused or aggravated his diagnosed conditions. In her November 8, 2007 report, she indicated that appellant jumped to avoid an automobile and twisted his back and cervical spine. In a duty status report of the same date, Dr. Brunson diagnosed neck spasms and injury to appellant's lower back due to a motor vehicle accident. Although these reports provide some support for causal relationship, they are insufficient to establish appellant's claim because Dr. Brunson did not provide rationale or reasoning to explain the basis of her conclusion on causal relationship.<sup>8</sup>

Appellant also submitted a November 6, 2007 treatment note from a physician's assistant noting that appellant had been treated at an emergency room that day. However, the Board has noted a physician's assistant is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician.<sup>9</sup>

The Office notified appellant of the type of evidence needed to establish his claim on November 15, 2007. Specifically, it advised that appellant needed to submit a physician's medical explanation of how the alleged work incident contributed to his lower back and neck condition. However, appellant did not submit a reasoned medical opinion explaining how the work incident caused or aggravated any diagnosed conditions. Consequently, the Board finds that the Office properly denied appellant's claim.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of the Act provides that a claimant not satisfied with a decision of the Office is entitled to a hearing before an Office hearing representative when the request is made within 30 days after issuance of the Office's decision.<sup>11</sup> Under the implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to a hearing by

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<sup>7</sup> See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

<sup>8</sup> *S.S.*, 59 ECAB \_\_\_ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

<sup>9</sup> See 5 U.S.C. § 8101(2) (defining the term "physician"); *George H. Clark*, 56 ECAB 162 (2004).

<sup>10</sup> The record indicates that the employing establishment issued appellant a Form CA-16. The Board has held that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment or a medical examination as a result of an employee's claim of sustaining an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Elaine Kreyborg*, 41 ECAB 256 (1989). The Office did not address this matter in its decision.

<sup>11</sup> 5 U.S.C. § 8124(b)(1).

writing to the address specified in the decision within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>12</sup> If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.<sup>13</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Office issued its decision denying appellant's claim on December 26, 2007. Appellant's request for an oral hearing was dated May 6, 2008. Because the hearing request was made more than 30 days after the December 26, 2007 decision, the Board finds that the Office properly denied appellant's request for a hearing as untimely filed. Appellant is not entitled to a hearing as a matter of right. The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation in requests for hearing.<sup>15</sup>

The Office exercised its discretionary authority under section 8124 in considering whether to grant a hearing. It found that appellant's request could be equally well addressed through a request for reconsideration under section 8128 and the submission of new evidence. The Board has held that it is an appropriate exercise of discretion for the Office to apprise appellant of the right to further proceedings under the reconsideration provisions of section 8128.<sup>16</sup> The Board finds that the Office properly exercised its discretion in denying appellant's request for an oral hearing as untimely.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on November 6, 2007 in the performance of duty. The Board also finds that the Office properly exercised its discretion in denying appellant's request for an oral hearing as untimely.

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<sup>12</sup> 20 C.F.R. § 10.616(a); 5 U.S.C. § 8124(b)(1).

<sup>13</sup> *Teresa Valle*, 57 ECAB 542 (2006).

<sup>14</sup> *D.E.*, 59 ECAB \_\_\_ (Docket No. 07-2334, issued April 11, 2008).

<sup>15</sup> *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

<sup>16</sup> *See Andre Thyratron*, 54 ECAB 257 (2002).

<sup>17</sup> Following issuance of the Office's December 26, 2007 decision, appellant submitted new evidence to the Office. He also submitted additional evidence on appeal. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated June 19, 2008 and December 26, 2007 are affirmed.

Issued: June 17, 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