



On December 21, 2007 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a Form CA-16 dated October 15, 2007, Dr. Aldo M. Rosemblat, Board-certified in neurosurgery, stated that appellant experienced a pinching sensation in his lower back, radiating down to his hamstring, while participating in a firearms training exercise. He diagnosed lumbar strain and a sacroiliac dysfunction.<sup>1</sup>

Appellant submitted three reports received by the Office on January 23, 2008. In a report dated October 15, 2007, Dr. Rosemblat diagnosed a herniated disc at L5-S1. He stated in another report dated October 15, 2007:

“On October 12, 2007, appellant ... in the course of a normal training exercise ... injured his low back. He soon progressed to pain in the lower extremities and extreme difficulty in standing, sitting and walking. He has been out of work since then. Part of the pain and discomfort has subsided, but he is very stiff and he moves slowly and deliberately.

“There was pronounced paravertebral muscular spasm, pain to palpation of the ST joints, the pelvis was unleveled, the piriformis stretching signs were positive. There was decreased strength of the muscles supplied by L4, L5 and S1.”

Dr. Rosemblat recommended that appellant stay out of work until his condition improved and scheduled appellant for a magnetic resonance imaging (MRI) scan of the lumbar spine, which he underwent on October 18, 2007. The results of the MRI scan indicated a small central disc protrusion at L5-S1 and noted a previous history of disc herniation. It noted no significant spinal canal or foraminal narrowing and unremarkable soft tissues.

In a report dated October 29, 2007, Dr. Rosemblat stated:

“The patient returns today for follow-up. The MRI [scan] of the lumbar spine showed some disc degeneration at L4 and L5, but no disc herniation. The neurological and musculoskeletal examinations are improved. He was told to continue with physical therapy and out of work for a couple of more weeks.”

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<sup>1</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 Kreymborg*, 41 ECAB 256 (1989). The Office did not address this matter in its decision.

By decision dated January 24, 2008, the Office denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a lower back injury in the performance of duty on October 12, 2007.

On February 3, 2008 appellant requested reconsideration. By decision dated April 22, 2008, the Office denied modification of its prior decision.

On May 9, 2008 appellant requested reconsideration. He contended that the Office did not consider all of the circumstances pertaining to his October 12, 2007 work injury or describe in sufficient detail the activities he was engaged in at the time he was injured. Appellant stated that on the date of his injury he was conducting timed shooting events that included shooting from prone, kneeling and standing firing positions. He depicted drills which included running, firing and maneuvering in quick repetition, rising from a prone position, then falling down and getting up again, while firing heavy guns. Appellant related that he began to experience lower back pains when he lifted himself and his weapon -- a Thompson submachine gun -- from the ground to run, fire and maneuver. He stated that the pain got progressively worse while standing. Appellant also stated that the Office relied on incorrect legal authority in its decisions denying his claim.

Appellant submitted physical therapy notes dated November 7 to 28, 2007 in support of his request.

By decision dated July 28, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<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.<sup>5</sup> Second, the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

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 is the belief that her condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

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

The Office accepted that appellant experienced lower back pain while conducting firearms training on October 12, 2007. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>10</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the October 12, 2007 employment incident caused a personal injury.

Appellant submitted reports from Dr. Rosemblat, who related that appellant experienced pain in his lower back during training exercise on October 12, 2007, which radiated down to his hamstrings. Dr. Rosemblat stated findings on examination and diagnosed lumbar strain and sacroiliac dysfunction. He stated that appellant noted difficulty sitting, standing and walking and felt stiffness in his lower back. Dr. Rosemblat had appellant undergo an MRI scan on October 18, 2007 which revealed a small central disc protrusion at L5-S1, with a previous history of disc herniation but no current findings of herniation. The MRI scan indicated no significant spinal canal or foraminal narrowing and unremarkable soft tissues.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case,

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<sup>6</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> *Id.*

<sup>8</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *John J. Carlone*, *supra* note 5.

the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Although Dr. Rosemblat's reports presented diagnoses of appellant's condition, they did not adequately address how this condition was causally related to the October 12, 2007 work incident. His reports did not explain how medically appellant would have sustained a lower back injury because he was engaged in firearms training exercises. There is insufficient rationalized evidence in the record that appellant's lower back injury was work related. Therefore, he failed to provide a medical report from a physician that explains how the work incident of October 12, 2007 caused or contributed to the claimed lower back injury.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the October 12, 2007 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a lower back injury in the performance of duty. The Office properly denied appellant's claim for compensation.

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

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.<sup>12</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>13</sup>

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

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. In his request letter, he described the activities which caused his claimed lower back injury in greater detail. Appellant expanded on how he believed his work duties as a firearms instructor resulted in lower back pain. The Office, however, has accepted that he experienced lower back pain while conducting firearms training on October 12, 2007. Appellant did not submit any evidence or legal argument which addressed the relevant issue of whether he submitted rationalized, probative medical evidence sufficient to establish that the October 12, 2007 employment incident caused a personal injury. The November 2007 physical therapy notes carry no probative weight with regard to the issue at bar because they do not address appellant's claimed condition and are not attributable to a physician. A physical therapist is not a "physician" within the meaning of section 8101(2) of the Act and cannot render a medical opinion.<sup>14</sup> The Board has held that the submission of evidence which

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<sup>11</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>12</sup> 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

<sup>13</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>14</sup> *Barbara J. Williams*, 40 ECAB 649 (1989).

does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>15</sup> Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.<sup>16</sup>

### CONCLUSION

The Board finds that appellant has failed to establish that he sustained a lower back injury in the performance of duty. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

### ORDER

**IT IS HEREBY ORDERED THAT** the January 24, April 22 and July 28, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: March 10, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *David J. McDonald*, 50 ECAB 185 (1998).

<sup>16</sup> The Board notes that appellant submitted additional evidence to the record following the April 12, 2004 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).