



coworker playfully grabbed him at work.<sup>1</sup> He stated that, after this incident, he had pain in his neck running down to his lower back. Appellant did not stop work at that time.

By letter dated October 7, 2009, the Office requested additional factual and medical information from appellant stating that the initial information submitted was insufficient to establish the claimed injury.

In an undated statement, appellant indicated that after his injury he immediately filed an accident report with the employing establishment. He asserted that he filed a complaint against his supervisor and management and was reassigned because he could not get along with management. In an October 15, 2009 statement, appellant noted that he reported his injury to the employing establishment and subsequently experienced pain radiating into his back. He reported a history of neck surgery prior to this incident.

Appellant submitted notes from the Veterans Administration dated June 5, 2009 where he was treated by Dr. David A. Jerrard, Board-certified in emergency medicine, for low back pain. He reported a history of chronic neck and back pain which was exacerbated after an incident at work where a coworker grabbed him by the neck. Dr. Jerrard noted findings upon examination of mild tenderness to palpation across the back of the neck and tenderness to palpation along the spinal column in the lumbar region. He diagnosed exacerbation of chronic low back pain and recommended ibuprofen for pain.

In a decision dated November 12, 2009, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that appellant's condition was caused by the accepted work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within the applicable time limitation 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 occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in

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<sup>1</sup> The employing establishment controverted appellant's claim and noted that appellant failed to report his injury within 30 days. The employer further asserted that appellant filed the current claim because he was dissatisfied with his job reassignment and his Equal Employment Opportunity (EEO) complaint was unsuccessful.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

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>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

Appellant alleged that he sustained a neck and low back injury when his coworker playfully grabbed his neck while at work. The Board notes that the evidence supports that the incident occurred on June 5, 2009 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a neck or low back injury causally related to the June 5, 2009 work incident.

On October 7, 2009 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician in which the physician explains why the June 5, 2009 work incident caused or aggravated his claimed condition.

Appellant submitted notes from the Veterans Administration dated June 5, 2009 where he was treated by Dr. Jerrard, who noted findings of mild tenderness to palpation across the back of the neck and tenderness to palpation along the spinal column in the lumbar region. He reported a history of chronic neck and back pain which was exacerbated after an incident at work where a coworker grabbed him by the neck. Dr. Jerrard diagnosed exacerbation of chronic low back pain. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Jerrard is providing his own opinion, he failed to provide a rationalized

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<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

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

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

opinion explaining why any diagnosed conditions were caused or aggravated by particular factors of employment.<sup>8</sup> Consequently this report is of little probative value and does not establish appellant's traumatic injury claim.

No other medical evidence was submitted by appellant which provides a physician's opinion on the causal relationship between appellant's work factors on June 5, 2009 and a diagnosed medical condition.

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 the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a neck or low back injury causally related to his June 5, 2009 employment incident.

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<sup>8</sup> *See id.*

<sup>9</sup> *See Dennis M. Mascarenas, 49 ECAB 215 (1997).*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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