



regarding his condition, along with copies of a lumbar discogram and postdiscogram computerized tomography (CT) scan dated September 19, 2003, medical treatment notes dated December 26, 2002 and July 22, 2003,<sup>1</sup> a November 26, 2002 treatment note from Dr. Daniel Kloster, a Board-certified anesthesiologist, which diagnosed lumbar radiculopathy and hospital notes from Baptist-Lutheran dated December 31, 2002.

In an August 12, 2003 medical report, Dr. R. Sean Jackson, a Board-certified orthopedic surgeon, provided an impression of back and left leg pain with isthmic spondylolisthesis at L5-S1. In an April 13, 2004 note, Dr. Jackson advised that appellant was scheduled for surgery on April 28, 2004 and was unable to work due to his back pain. In an April 23, 2004 report, Dr. Jackson again diagnosed isthmic spondylolisthesis with advanced degenerative discs at L4-5 and L5-S1. He stated that the isthmic spondylolisthesis represented a traumatic abnormality and opined that appellant's work-related activities contributed to the onset of his pain symptoms and limitation of activity as the process did not become symptomatic until recently.

By letter dated May 18, 2004, the Office informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. Appellant submitted presurgical laboratory work dated April 28, 2004, a copy of his April 28, 2004 admission and operative report and physical therapy notes.

In a decision dated June 30, 2004, the Office denied appellant's claim on the grounds that fact of injury was not established.

In a letter dated July 6, 2004, appellant requested reconsideration and submitted a copy of his job description.

The Office determined that the evidence was sufficient to document appellant's exposure to repetitive activities associated with his federal employment. On August 23, 2004 the Office referred appellant, along with a statement of accepted facts, a list of questions and the case record, to Dr. Don B.W. Miskew, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated September 9, 2004, he opined that appellant had developmental congenital spondylolisthesis and noted that, since the discograms did not reproduce appellant's pain, it was most likely due to the underlying disease process. Dr. Miskew found no evidence of appellant's work contributing to the progression of his underlying spondylolisthesis and opined that the underlying disease process would have progressed irrespective of his federal employment. He stated that appellant was in the recovery stage of a laminectomy and fusion operation of L4 to S1 and, if he recovered completely, could return to his position without any restrictions.

By decision dated September 15, 2004, the Office denied appellant's claim on the basis that the medical evidence of record failed to establish that his diagnosed medical conditions were caused or aggravated by factors of his federal employment.

---

<sup>1</sup> It is not clear from the record whether a physician wrote these treatment notes.

## LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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>2</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>3</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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>4</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>5</sup>

## ANALYSIS

Appellant has submitted insufficient medical evidence to establish that his conditions of spondylolisthesis with degenerative discs at L4-5 and L5-S1 were caused or aggravated by factors of his federal employment. The medical evidence of record and diagnostic reports which address appellant's diagnosed medical conditions fail to provide sufficient medical explanation of how appellant's federal work duties caused or contributed to his medical conditions. The Office informed appellant of the evidence needed to establish his claim in its letter of May 18, 2004. Appellant submitted hospital and diagnostic reports regarding his back condition; however, these reports do not contain a discussion on causal relationship. As noted, the requisite evidence needed to establish the claim was a medical report from a physician explaining how appellant's federal employment contributed to his diagnosed conditions. Dr. Jackson stated that appellant's work-related activities contributed to the onset of his pain symptoms and limitation of activity as the process had recently become symptomatic. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was

---

<sup>2</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>3</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>4</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>5</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

asymptomatic but becomes symptomatic at work is insufficient, without supporting rationale, to establish causal relationship.<sup>6</sup> Dr. Jackson did not provide an explanation of the mechanics by which appellant's job would cause or aggravate her condition. The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty; however, such opinion should not be speculative or equivocal.<sup>7</sup> Dr. Jackson did not support his stated conclusion on causal relationship with sufficient rationale.

Dr. Miskew, an Office referral physician, examined appellant, reviewed appellant's history and found no basis on which to attribute his spinal condition to his employment activities. Rather, Dr. Miskew opined that the underlying back condition would have progressed regardless of his federal employment work activities.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by employment.<sup>8</sup> As part of this burden he must present rationalized medical opinion evidence showing causal relationship.<sup>9</sup> He did not do so in this case. As there is no probative, rationalized medical evidence explaining why appellant's medical conditions of spondylolisthesis and degenerative discs at L4-5 and L5-S1 were caused or aggravated by factors of his employment, he did not meet his burden to establish that his medical conditions are causally related to his federal employment. The Board will affirm the Office's finding that appellant did not sustain a compensable injury.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that his diagnosed medical condition was caused or aggravated in the performance of duty.

---

<sup>6</sup> See *John F. Glynn*, 53 ECAB 562 (2002).

<sup>7</sup> *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>8</sup> *Id.*

<sup>9</sup> *Solomon Polen*, *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 15, 2004 is affirmed.

Issued: May 13, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member