



In support of his claim, appellant submitted: (a) work restrictions dated December 8, 2004; (b) a September 27, 2003 report from Dr. Frank E. Haydu, Board-certified in emergency medicine; (c) an October 25, 2004 report of a magnetic resonance imaging (MRI) scan; (d) a work restrictions form dated December 9, 2004; and (e) a September 24, 2001 report from Dr. Bernard Greenfield, Board-certified in emergency medicine. In his report, Dr. Greenfield diagnosed lumbar strain and advised that appellant has experienced back problems for at least 10 years. He stated that appellant had a limited future as a laborer lifting heavy objects.

In his September 27, 2003 report, Dr. Haydu stated that appellant was complaining of low back pain, which had been intermittent over several years but had worsened over the past few days. He advised that appellant had been having intermittent episodes of pain radiating down to the ankles associated with intermittent numbness and tingling especially on the left. Dr. Haydu noted that appellant had degenerative disc disease documented by MRI scan. He diagnosed chronic low back pain and lumbar disc syndrome. The October 25, 2004 MRI scan report stated:

“There is desiccation of all cervical discs. There is moderate narrowing of the C5-6 and C6-7 disc spaces. There is moderate right posterolateral disc herniation from the C5-6 disc space and there is a mild right posterolateral disc herniation from the C6-7 disc space. There is some straightening of the cervical spine with loss of its normal lordotic curvature. No other abnormalities are seen. The spinal cord is normal appearance. All vertebral bodies are of normal height. No subluxations or fractures or tumors are seen.”

The diagnoses were C5-6 degenerative disc changes with a moderate-sized right posterior lateral disc herniation and C6-7 degenerative disc changes with a mild posterolateral disc herniation.

By letter dated December 20, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office 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 report dated October 20, 2004, Dr. Robert Rubenstein, a neurologist, stated that appellant had right neck and arm pain, which developed the previous week following a lumbar epidural steroid injection. Dr. Rubenstein advised that the pain had gradually worsened and now radiated down the right deltoid, biceps and radial forearm, with constant numbness in the thumb. He opined that appellant had a right C6 radiculopathy likely on the basis of disc herniation.

In a report dated October 26, 2004, Dr. Rubenstein stated that appellant had right arm radiculopathy with excruciating pain in the right biceps. He diagnosed right C6 radiculopathy secondary to disc herniation, with unrelenting pain, constant numbness and significant weakness.

Dr. David L. Pocus, a Board-certified family practitioner, submitted an August 30, 2004 report, in which he stated that appellant continued to have severe back pain in the lower lumbar area with minimal radiation. He opined that appellant's neurologic examination was unchanged.

By decision dated January 24, 2005, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that he sustained the claimed back condition in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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>2</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>3</sup>

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. 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>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed cervical condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

## ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates his alleged back condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Drs. Haydu, Greenfield, Rubenstein and Pocus, but none of these reports provided a probative, rationalized medical opinion that the claimed back condition was causally related to employment factors. Dr. Haydu related intermittent back pain radiating down to the ankles associated with intermittent numbness and tingling especially on the left, which had recently worsened. He advised that appellant had degenerative disc disease indicated by MRI scan. Dr. Greenfield diagnosed lumbar strain, stated that appellant had experienced back problems for at least 10 years and recommended that appellant forego working as heavy laborer. Dr. Rubenstein related complaints of right neck and arm pain radiating down the right deltoid, biceps and radial forearm, with constant numbness in the thumb. He diagnosed right arm and right C6 radiculopathy secondary to disc herniation, with unrelenting pain, constant numbness and significant weakness. Finally, Dr. Pocus opined that appellant had severe back pain in the lower lumbar area with minimal radiation and advised that his neurologic examination was unchanged.

The medical reports noted that appellant did not contain a probative, rationalized medical opinion that the claimed back condition was causally related to employment factors. These reports are therefore of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed back condition was currently affected by or related to factors of employment.<sup>6</sup> Although Dr. Greenfield recommended that appellant forego working as heavy laborer due to the lumbar pain he was experiencing, he failed to provide a probative, rationalized medical opinion to establish that appellant's back condition was causally related to any of his work duties. 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, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>7</sup> None of the physicians above submitted an opinion which sufficiently described the medical process through which appellant's employment would have been competent to cause the claimed back condition. Lastly, although the October 25, 2004 MRI scan indicated that appellant had C5-6 degenerative disc changes with a moderate-sized right posterior lateral disc herniation and C6-7 degenerative disc changes with a mild posterolateral disc herniation, there is no medical report in the record which indicates that these findings were caused by any employment-related activity or related these findings to any employment-related condition. The Office therefore properly found that appellant did not sustain a back condition in the performance of duty.

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

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<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed back condition was causally related to his employment. The Board therefore affirms the Office's January 24, 2005 decision.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish that his claimed back condition was sustained in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 7, 2005  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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