

neck and back pain to lifting, twisting and turning at work. Appellant noted that he first developed neck symptoms after an accepted April 13, 1992 left orbital fracture sustained in a work-related motor vehicle accident. He stopped work shortly after January 27, 2007. It is unclear when appellant returned to work.

In a June 13, 2007 letter, the Office advised appellant that his claim would be adjusted as an occupational disease claim as he attributed his condition to new work factors.² It described the additional evidence needed to establish his claim. The Office afforded appellant 30 days in which to submit such evidence.

Appellant sought treatment for muscular neck and back pain from February through December 1998.³ He also provided records regarding the April 24, 2001 neck injury. Imaging studies performed on April 25 and 26, 2001 showed advanced, multilevel degenerative disc disease from C5-6 with an old fracture of the C7 spinous process. Dr. Kyra Harvey, an attending, Board-certified internist, treated appellant for neck and back pain from November 2002 to December 2003. She diagnosed degenerative disc disease from C5-7, cervical spondylosis and an old C4 fracture. Dr. Harvey submitted progress notes through July 10, 2006 regarding lumbar pain.

Appellant was also treated by Dr. Plas T. James, an attending Board-certified orthopedic surgeon. In a February 6, 2007 report, Dr. James provided a history of injury and treatment, including the April 13, 1992 and April 24, 2001 injuries. He related appellant's account of increased neck pain with driving, head movements and sneezing. Dr. James obtained x-rays showing severe degenerative disc disease at C4-5 and C6-7.⁴ He performed an anterior fusion and decompression at C5-6 and C6-7 on April 2, 2007. In a June 27, 2007 form report, Dr. James diagnosed statuspost cervical fusion, degenerative disc disease and a herniated cervical disc. He checked a box "yes" indicating his support for a causal relationship between these diagnoses and appellant's history of motor vehicle accidents.

By decision dated July 17, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established.⁵ It accepted that appellant's duties required frequent bending, lifting and twisting. The Office found, however, that appellant submitted insufficient medical evidence to establish that those factors caused or contributed to the claimed neck condition.

² The Office assigned the February 13, 2007 claim File No. xxxxxx462.

³ An October 13, 1998 x-ray showed anterior osteophytes from C5-7.

⁴ A February 13, 2007 magnetic resonance imaging (MRI) scan showed a central cord lesion at C6-7 with severe degenerative disc disease at C5-6. A March 5, 2007 electromyography (EMG) and nerve conduction velocity (NCV) study of the right upper extremity showed a low grade chronic C7 radiculopathy vs. myelopathy.

⁵ The Office initially denied the claim by decision dated July 9, 2007. It then determined that the July 9, 2007 decision was issued prematurely, less than 30 days after the June 13, 2007 letter. The Office therefore vacated the July 9, 2007 decision.

In an August 2, 2007 letter, appellant requested a telephonic hearing, held December 3, 2007. During the hearing, he asserted that his cervical condition began with the accepted 1992 motor vehicle accident, worsened after the April 24, 2001 accident and was aggravated by repetitive twisting, turning and bending at work. Appellant submitted additional evidence.⁶

In a July 31, 2007 letter, Dr. James provided a history of injury and treatment. He stated that in January 2007, appellant experienced increased neck pain at work while performing activities of daily living. As imaging studies showed a cord lesion at C6-7 with severe degenerative disc disease, a herniated disc and foraminal stenosis at C5-6, appellant required the April 2, 2007 decompression and fusion. Dr. James explained that due to appellant's previous disc herniation and degenerative disc disease, it was "very possible" that repetitive lifting, bending and twisting at work would "cause the herniation to progress and worsen" such that surgery was required.

In a second July 31, 2007 letter, Dr. James opined that appellant's "job of repetitive bending, lifting or twisting ... will increase the odds of the herniation to progress and worsen to the degree that the patient would need surgical intervention."

By decision dated and finalized January 29, 2008, an Office hearing representative affirmed the July 17, 2007 decision, finding that the medical evidence was insufficiently rationalized to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁷ 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; 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.⁸ 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.⁹

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) 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

⁶ Appellant also submitted medical reports regarding the April 13, 1992 left orbital fracture, including April 28 and October 9, 1992 surgeries. These reports do not discuss a neck injury.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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 generally rationalized medical opinion 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 medial 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.¹⁰

ANALYSIS

Appellant claimed that he sustained a neck condition on or before January 27, 2007 due to lifting, bending and twisting in the performance of duty. Dr. Harvey, an attending Board-certified internist, and Dr. James, an attending Board-certified orthopedic surgeon, diagnosed degenerative cervical disc disease. The Office accepted as factual that appellant's duties as a mail clerk required frequent twisting, bending and lifting. The issue is whether, he submitted sufficient medical evidence to establish a causal relationship between his diagnosed neck condition and the accepted work factors.

Dr. James submitted a June 27, 2007 form report in which he checked a box "yes" indicating his support for a causal relationship between appellant's degenerative disc disease and the accepted motor vehicle accidents. The Board has held that checking a box on a form report is of little probative value in establishing causal relationship.¹¹ In July 31, 2007 letters, Dr. James opined that it was "very possible" that repetitive lifting, bending and twisting at work "could cause the herniation to progress and worsen." He then stated that appellant's work duties "will increase the odds of the herniation to progress and worsen. The Board finds these reports are too speculative to establish causal relationship in this case."¹²

The Office advised appellant by June 13, 2007 letter of the need to submit rationalized medical evidence explaining how and why work factors would cause the claimed neck condition. Appellant did not submit such evidence. Therefore, he did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a neck condition in the performance of duty.

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *Calvin E. King*, 51 ECAB 394 (2000).

¹² *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); see *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2008 is affirmed.

Issued: November 19, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board