

**United States Department of Labor
Employees' Compensation Appeals Board**

M.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bloomfield Hills, MI, Employer**

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**Docket No. 08-2474
Issued: May 19, 2009**

Appearances:

Paul H. Kullen, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 16, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated April 1 and September 3, 2008 affirming the denial of her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 25, 2006 appellant, then a 31-year-old distribution clerk, filed an occupational disease claim alleging that she sustained Grade 1 anterolisthesis of L5 on S1 due to lifting magazines at work. She first became aware that her condition was employment related in November 1998. The employing establishment noted that appellant was last exposed to the work

conditions alleged to have caused her condition on November 30, 2006 and that she had been placed on light-duty work. The employing establishment controverted the claim.

Appellant submitted a November 9, 1998 CA-17 form, duty status report, from Dr. Rudolph Menchi, who indicated that appellant could return to light duty that day.

In a November 21, 2006 report, Dr. Michael Kenneson, Board-certified in family medicine, noted appellant's history of low back pain since 2002 due to spondylolisthesis. He also noted that appellant's job had changed and she was having increased difficulty meeting the demands of the job. Dr. Kenneson advised that appellant could not continue in her present position much longer as she needed a job with a routine. He indicated that appellant's work restrictions included no lifting over 25 pounds, no continuous pushing or pulling and intermittent driving and operating machinery.

On December 12, 2006 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to provide additional evidence.¹

Appellant submitted disability forms from 2002 in which Dr. Kenneson addressed treatment for post-traumatic cephalgia and chronic low back pain. In an April 5, 2002 health care form, Dr. Kenneson noted appellant's complaint of neck pain and low back pain after a car hood fell onto her neck on February 5, 2002. Appellant also submitted 2002 work restriction forms from Dr. Joseph Femminineo, a Board-certified physiatrist, which diagnosed lumbar radiculopathy and noted dates that appellant could not work. In a March 20, 2002 x-ray report of appellant's lumbar spine, Dr. Stanley Halprin, a radiologist, diagnosed Grade 2 spondylolisthesis of L5 on S1 with associated defect in the pars interarticularis most probably on the right but questionably bilaterally. On April 24, 2004 Dr. Zenon Zarewych, a Board-certified diagnostic radiologist, advised that a magnetic resonance imaging (MRI) scan of the lumbar spine showed Grade 2 anterolisthesis at L5-S1, moderate narrowing of the neural foramina bilaterally with no significant central canal narrowing and minimal concentric disc bulge at L4-5 without significant narrowing of the central canal or neural foramina. On September 25, 2006 Dr. John Makris, a Board-certified diagnostic radiologist, stated that an MRI scan of appellant's lumbar spine revealed degenerative changes with disc bulge at L4-5. He also noted Grade 1 anterolisthesis of the vertebral body L5 on S1 with a disc bulge, facet disease and mild canal stenosis.

In a January 10, 2007 report, Dr. Kenneson diagnosed chronic low back pain as a result of spondylolisthesis, a congenital defect. He noted that on November 1, 1998 appellant was lifting stacks of magazines when she developed pain, but was able to function on the job. Dr. Kenneson also noted that on February 5, 2002 a car hood fell onto appellant's neck causing headaches and severe neck and low back pain. He advised that appellant had continued low back pain and required restricted work duties. Dr. Kenneson indicated that symptoms associated with appellant's condition worsened with repetitive lifting, twisting, bending, pushing and pulling. He noted that appellant could not function at work without restrictions. Dr. Kenneson also provided disability forms from June 2006 to January 10, 2007 noting appellant's diagnoses, work restrictions and disability status.

¹ The Office noted that appellant had filed a traumatic injury claim under OWCP File No. xxxxxx543 alleging injury to her lower back on November 19, 1998. However, that claim is not presently before the Board.

In an undated statement, appellant advised that her job required continuous standing, bending, twisting, lifting, pushing and pulling heavy equipment. She indicated that her 1998 lifting incident was treated by the work clinic with no further treatment. Appellant further indicated that she was diagnosed with spondylolisthesis in 2002 after a car hood fell on her neck. She noted that her doctors informed her that her spondylolisthesis could have been triggered by the lifting accident or any routine work duty. Appellant also submitted several medical records related to her 2002 injury.

By decision dated March 5, 2007, the Office denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition was related to the established work-related events.

On January 3, 2008 appellant requested reconsideration. She submitted a January 11, 2008 MRI scan report of Dr. Roger Fenton, a radiologist, who found the most significant changes at L5-S1 where there was a Grade 1 and 2, almost a Grade 2 anterolisthesis, present with associated degenerative disc disease and vacuum disc phenomenon present. Dr. Fenton noted this caused resultant bilateral foraminal stenosis. He further noted that at L4-5 there was desiccation of the disc with central annular bulging and tearing.

By decision dated April 1, 2008, the Office denied modification of its March 5, 2007 decision finding that the medical evidence was not sufficient to establish a causal relationship between appellant's condition and her employment factors.

On June 3, 2008 appellant requested reconsideration. She also submitted a May 5, 2008 report of Dr. Kenneson in which he noted appellant's history of spondylolisthesis at L5-S1 and associated bilateral foraminal stenosis. Dr. Kenneson compared MRI scan results from 2006 and 2008 and found that appellant's condition had worsened. He opined that appellant's job duties had "more likely than not resulted in a permanent aggravation of her condition." Dr. Kenneson further noted that appellant's symptoms had worsened and her occupation had more likely than not adversely altered the course of her condition.

By decision dated September 3, 2008, the Office denied modification of its April 1, 2008 decision finding that the medical evidence was not sufficient to establish that appellant's medical condition was connected to her employment duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.²

² *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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; and (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.³

The medical evidence required to establish causal relationship, generally, is 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 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.⁴

It is well established that, where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable. However, the normal progression of untreated disease cannot be said to constitute aggravation of a condition merely because the performance of normal work duties reveal the underlying condition. For the conditions of employment to bring about an aggravation of preexisting disease, the employment must be such as to cause acceleration of the disease or to precipitate disability.⁵

ANALYSIS

Appellant was diagnosed with spondylolisthesis, which she attributed to her job as a distribution clerk that required standing, bending, twisting, lifting, pushing and pulling heavy equipment. However, she has not provided sufficient medical evidence to establish that her diagnosed condition is causally related to these identified employment factors.

In support of her claim, appellant submitted medical reports from Dr. Kenneson, who diagnosed spondylolisthesis. Dr. Kenneson advised that appellant's spondylolisthesis had worsened between 2006 and 2008. In a May 5, 2008 report, he stated that appellant's job duties "more likely than not" resulted in a permanent aggravation of her condition. Although Dr. Kenneson's report provides some support for causal relationship, his opinion is of diminished probative value as it is couched in speculative terms.⁶ He qualified his opinion by

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ *Id.*

⁵ *A.C.*, 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).

⁶ *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant "may have ruptured" and that the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion).

noting that appellant's symptoms had worsened and her occupation had more likely than not adversely altered the course of her condition. Dr. Kenneson's opinion lacks medical rationale to explain the reasoning in support of his stated conclusion.⁷ He did not explain how the repetitive movements from specific job duties aggravated her spondylolisthesis. Dr. Kenneson also did not explain why appellant current status was not the result of the normal progression of her underlying degenerative condition. As noted, the opinion of the physician 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 employee.⁸ Therefore, this report is insufficient to meet appellant's burden of proof. Other reports from Dr. Kenneson also do not specifically explain the processes by which particular job duties aggravated appellant's spondylolisthesis or other diagnosed condition. For example, in his January 10, 2007 report, he noted that appellant's symptoms had worsened with repetitive lifting, twisting, bending, pushing and pulling. However, Dr. Kenneson did not specifically opine that there was a causal relationship between appellant's condition and her job duties.⁹

Dr. Menchi's duty status report did not address whether appellant's spondylolisthesis was caused or aggravated by the repetitive movements of her position. As noted, medical evidence without an opinion on causal relationship is of limited probative value. Likewise, Dr. Femminineo's work restriction forms did not address whether a causal relationship existed between appellant's spondylolisthesis and her employment factors. Similarly, the diagnostic test reports of record do not express an opinion on the cause of appellant's diagnosed condition.

Consequently, the medical evidence does not establish that appellant's low back condition is causally related to her factors of employment. Although she asserts on appeal that she has submitted sufficient medical evidence to establish her claim, the Board finds that the medical evidence contains insufficient reasoning to establish causal relationship between appellant's diagnosed condition and specific factors of her employment.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

⁷ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *See K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated September 3 and April 1, 2008 are affirmed.

Issued: May 19, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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