

In a January 6, 2009 note, appellant relates that he has chronic back pain which he attributes to a prior employment injury that occurred “years ago.” He noted that, on January 6, 2009, while working, he felt his lower back stiffening and that it was more difficult for him to bend and sweep the lower levels of the delivery bar code sorter machine.

Appellant submitted notes, dated January 8 and 19, 2009, both of which contained illegible signatures and provided work restrictions. The January 8, 2009 note diagnosed lumbar strain.

Appellant submitted a January 13, 2009 accident report disclosing that on January 1, 2009, while “bending down on a DBCS machine,” appellant strained his back.

By decision dated April 10, 2009, the Office denied the claim, finding that the evidence of record did not demonstrate that the claimed medical condition was causally related to the established employment factors.

On May 29, 2009 appellant requested reconsideration. On June 3, 2009 he submitted a February 12, 2009 report, from Dr. Clifford Katz, a Board-certified diagnostic radiologist, who Dr. Katz reported that a magnetic resonance imaging (MRI) scan of appellant’s lumbar spine revealed broad-based disc protrusion at the L5-S1 level as well as a T2 hyperintense lesion in the right lobe of appellant’s liver and a 1.2 cm lesion in appellant’s left kidney.

By decision dated June 9, 2009, the Office denied the request for reconsideration.¹

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

¹ The Board notes that additional evidence was submitted to the record after June 9, 2009. The Board’s jurisdiction is limited to review of evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *G.T.*, *supra* note 4; *Nancy G. O’Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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

ANALYSIS -- ISSUE 1

Appellant identified the bending motions he performs over a DBCS machine as employment factors he considers responsible for his condition. His burden is to establish that the alleged medical condition is causally related to the identified employment factors. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence and, consequently, appellant's lay opinion is not relevant because lay individuals are not competent to render a medical opinion.⁹ Appellant has not submitted sufficient rationalized medical evidence and, accordingly, has not established he sustained an injury in the performance of duty casually related to his employment.

The January 8 and 19, 2009 notes containing illegible signatures do not constitute probative medical evidence as they lack any indication that they were completed by a physician.¹⁰

Appellant has failed to submit rationalized medical evidence establishing his claim and, therefore, the Board finds appellant has not established he sustained an injury in the performance of duty causally related to his employment.

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

⁹ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁰ *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹¹ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁴

ANALYSIS -- ISSUE 2

Appellant's May 29, 2009 reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law nor did it advance a new relevant legal argument not previously considered by the Office. Thus, appellant was not entitled to reconsideration based on the first two enumerated grounds.

Appellant also did not satisfy the third enumerated ground, submission of new relevant and pertinent evidence not previously considered by the Office. The relevant issue underlying appellant's claim is causal relationship. As noted earlier, causal relationship is a medical issue that can only be proven through production of probative rationalized medical opinion evidence. The February 13, 2009 MRI scan report, which diagnosed a broad-based disc protrusion at the L5-S1 level as well as a T2 hyperintense lesion in the right lobe of appellant's liver and a 1.2 cm lesion in appellant's left kidney, is not relevant or pertinent to the issue underlying appellant's claim because it lacks a rationalized opinion explaining how the identified employment factors caused the conditions diagnosed. Thus this evidence, though "new," is not relevant and pertinent evidence not previously considered by the Office.

Because appellant has not satisfied any of the above mentioned criteria, the Board finds that the Office properly refused to reopen his case for further review of the merits of his claim

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty causally related to his employment. The Board further finds that the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the June 9 and April 10, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board