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

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| **W.S., Appellant** | ) | |
| **and** | ) | |
| **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Palm Springs, CA, Employer** | ) | **Docket No. 10-573**<br>**Issued: September 3, 2010** |

*Appearances:*
*Alan J. Shapiro, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On December 28, 2009 appellant filed a timely appeal from a November 18, 2009 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim. 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 his burden of proof to establish that he sustained an injury in the performance of duty.

### ***FACTUAL HISTORY***

On March 10, 2009 appellant, a 47-year-old supervisory transportation security officer (STSO), filed an occupational disease claim (Form CA-2) alleging that he developed a back condition as a result of employment activities. He described the nature of his condition as

"spinal stenosis/diabetic neuropathy." Appellant first became aware that his condition was related to his employment on March 5, 2009.

In a letter dated March 13, 2009, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to submit factual information describing the employment activities he believed contributed to his condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to how the identified employment activities caused the diagnosed conditions.

Appellant submitted a March 5, 2009 report from Dr. David Perez, Board-certified in the fields of psychiatry and neurology, who related appellant's complaints of chronic low back and leg pain, which was increasing in intensity. Examination of the lumbar spine revealed tenderness to palpation, decreased range of motion and muscle spasms. There was diminished sensation to the lower leg and plantar foot. X-rays of the lumbar spine showed moderate spinal stenosis of L4-5 from spurring and three millimeter (mm) annulus bulge. Dr. Perez recommended that appellant "go on total disability due to the combination of his spinal stenosis and diabetic neuropathy which has made it impossible to work under the circumstances he is supposed to abide by."

In a statement dated March 10, 2009, appellant indicated that he was totally disabled on March 5, 2009 due to spinal stenosis and diabetic neuropathy. The pain and numbness in his back and legs had markedly increased over the previous few years. On March 22, 2009 appellant stated that he had sustained a spinal injury in 1986 while serving in the U.S. Marine Corps. He also described a February 12, 2008 work-related left knee injury. Although appellant had no restrictions or limitations when he began working at the employing establishment on September 22, 2002, he began experiencing significant pain due to the continuous lifting of luggage and heavy golf bags, standing for long periods of time, bending, turning, twisting, squatting, kneeling and wanding passengers. He described sharp-shooting pain in his legs and low back, numbness in my thighs and calf areas and continuous aching of his ankles and heels. Appellant's mid-lumbar area was tight and he was unable to pick up items off the ground without assistance.

On March 16, 2009 Dr. Perez stated that appellant suffered from a moderate spinal stenosis of the lumbar spine. Appellant's condition was chronic and caused a severe impact on him. Dr. Perez opined that appellant was unable to perform his job duties due to his symptoms.

In a March 27, 2009 form, entitled "certification of health care provider," Dr. Perez diagnosed "spinal stenosis from degenerative disc disease and degenerative arthritic changes -- three mm bulging disc at L4-5 intervertebral disc." He noted that appellant's condition was chronic and that he was permanently incapacitated as a result of his diagnosed condition.

The record contains reports of a January 23, 2009 magnetic resonance imaging (MRI) scan of the lumbar spine and a February 9, 2009 chest x-ray.

On March 23, 2009 Dorothy Lopes, a transportation security manager, for the employing establishment, stated that appellant had been a supervisor since November 27, 2005. In

appellant's supervisory position, he performed some screening duties that required lifting, when volume increases, but that 80 percent of his day was spent observing others perform their duties. On March 27, 2009 the employing establishment controverted his claim, contending that the medical evidence failed to establish a causal relationship between his claimed conditions and his employment activities.

By decision dated March 31, 2009, the Office denied appellant's claim on the grounds that he had not established a causal relationship between the diagnosed condition and established work-related events.

On May 27, 2009 appellant requested a telephonic hearing, which was held on September 11, 2009. He testified that, as a supervisor for the previous three years, he had been performing physical labor for approximately 20 percent of his time on the job. From September 2002, until appellant became a supervisor in December 2005, he performed the duties of a "regular officer," which included lifting, twisting, bending and loading for 8 to 10 hours a day. He stated that his back condition worsened as a result of his employment activities. Appellant's representative stated that he would be submitting additional medical evidence from Dr. Perez on the issue of causal relationship, following his receipt of records from the Veterans Administration. The claims examiner indicated that the record would be held open for 30 days.

The record contains a letter dated May 22, 2009 from Dr. Perez, reflecting a diagnosis of moderate spinal stenosis. The contents of the letter are identical to those of the Dr. Perez' March 16, 2009 report.

In an October 8, 2009 response to appellant's September 11, 2009 testimony, the employing establishment reiterated that there were minimal lifting requirements associated with appellant's supervisory position. Further, he was held accountable for knowledge of safe lifting practices and should have sought assistance if any load was determined to be excessively heavy. The record contains a March 30, 2009 notice of proposed seven-day suspension relating to appellant's act of refusing to permit two passengers to board an aircraft; a February 16, 2007 statement regarding the employing establishment's policies regarding baggage processing; and March 17 and September 29, 2009 statements from second-line supervisor Jeff Spach.

On October 8, 2009 Jennifer Darr stated that she had worked with appellant when he was a transportation security officer (TSO), a lead transportation security officer (LTSO) and an STSO. While appellant was working as a TSO, she observed him lifting checked baggage and screening passengers and carry-on baggage at the security checkpoint on a regular basis. While working as an LTSO, he performed these functions frequently. While working as a STSO appellant occasionally engaged in those activities. Although his supervisory duties required him to perform more oversight and less hands-on work, he continued to lift baggage and bend or kneel to screen passengers as described.

By decision dated November 18, 2009, the Office hearing representative affirmed the May 12, 2009 decision. It accepted that appellant was required to perform prolonged standing, bending, kneeling and lifting, but found that the medical evidence was insufficient to establish that his low back condition was causally related to the established employment activities.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged[2] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

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 the 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.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e*., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.[5]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere 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 a causal relationship.[6]

## ***ANALYSIS***

The Office accepted that appellant engaged in prolonged standing, bending, kneeling and lifting activities in his position as a TSO. The medical evidence of record is insufficient, however, to establish that his diagnosed conditions were caused or aggravated by the established employment activities. Therefore, appellant failed to meet his burden of proof.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joseph W. Kripp,* 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[3] *Dennis M. Mascarenas,* 49 ECAB 215, 217 (1997).

[4] *Michael R. Shaffer,* 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[6] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

Reports from appellant's treating physician are insufficient to establish appellant's claim. In a March 5, 2009 report, Dr. Perez related appellant's complaints of chronic low back and leg pain, provided examination findings and diagnosed moderate spinal stenosis. On March 16, 2009 he stated that appellant's lumbar condition was chronic and opined that appellant was unable to perform his job duties due to his symptoms. On March 27, 2009 Dr. Perez diagnosed "spinal stenosis from degenerative disc disease and degenerative arthritic changes [-]- [three] mm bulging disc at L4-5 intervertebral disc." He again noted that appellant's condition was chronic and that he was permanently incapacitated as a result of his diagnosed condition. Dr. Perez' May 22, 2009 letter repeated information contained in his March 16, 2009 report. None of his reports contained an opinion as to the cause of appellant's diagnosed conditions. The Board has repeatedly held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[7] The value of Dr. Perez' reports is further diminished by his failure to describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition.

The remaining medical evidence of record includes reports of a January 23, 2009 MRI scan of the lumbar spine and a February 9, 2009 chest x-ray. As these reports do not contain an opinion on the cause of appellant's condition, they are of limited probative value and insufficient to establish his claim.

Appellant expressed his belief that his conditions resulted from his employment activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how his claimed conditions were caused or aggravated by his employment, he did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

## ***CONCLUSION***

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

[7] *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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