



to factors of his federal employment. He became aware of his condition on December 24, 2004 and attributed it to his employment on March 8, 2005. Appellant related that he returned to work without restrictions but his condition became worse due to constant lifting and standing.

In a progress report dated October 18, 2006, Dr. Stephen A. Weil, a Board-certified internist, discussed appellant's complaints of hip pain. He diagnosed an aggravation of a previous work injury. Dr. Weil found that appellant should "stay off work because he is making this worse."

On October 30, 2006 Dr. Weil diagnosed arthralgia and a possible ilioinguinal ligament injury. He opined that appellant was unable to work and noted that the physical therapist did not want him to perform any ambulation.<sup>1</sup> In a duty status report of the same date, Dr. Weil diagnosed an aggravation of a groin injury and opined that appellant was disabled from work. He checked "yes" that the condition corresponded to the history provided on the form of appellant's physical therapist advising appellant that his condition had worsened. In an October 30, 2006 work restriction evaluation, Dr. Weil diagnosed chronic hip and groin pain and indicated that he could perform no activities, including walking, sitting or standing.

By letter dated November 7, 2006, the Office requested additional factual and medical information from appellant in support of his claim, including a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and employment factors.

In a disability certificate dated November 29, 2006, Dr. Weil asserted that appellant was unable to work from November 28, 2006 to January 10, 2007. On December 1, 2006 the employing establishment noted that appellant attributed his current condition to a prior traumatic injury on December 24, 2004, accepted by the Office for an unspecified disorder of the bone and cartilage and strain. Appellant further filed a claim for a testicular injury March 4, 2005 which the Office denied.

In a statement received on December 11, 2006, appellant related that he injured his right groin on December 22, 2004, assigned file number 142036815 and accepted for a sprain/strain of the groin. After 30 days he returned to work without restrictions but his condition worsened due to continually lifting bags, rotating and standing at work.

By decision dated December 11, 2006, the Office denied appellant's claim on the grounds that he did not provide factual evidence regarding the employment factors to which he attributed his condition. In a decision dated December 13, 2006, the Office vacated its December 11, 2006 decision because it had not considered appellant's factual statement. The Office denied the claim on the grounds that the medical evidence was insufficient to establish that he sustained the claimed condition due to the established work factors.

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<sup>1</sup> Dr. Mark A. Norling, a Board-certified anesthesiologist, gave appellant a right hip injection on October 10, 2006 and a right ilioinguinal nerve block on October 24, 2006.

On January 5, 2007 appellant requested reconsideration. He asserted that he now had a diagnosis of a torn labrum and that his physician had opined in a January 3, 2007 report that the condition resulted from lifting and rotating at work.

Appellant submitted an August 23, 2005 report from Dr. Weil who related that he treated appellant for right hip pain following a December 26, 2004 employment injury. Dr. Weil asserted that he initially believed that appellant had psoas bursitis but now felt that he had a joint derangement of some kind related to the original injury. After the first injury, it was thought that appellant was improving and perhaps he would be able to get back to work. However, in March 2005 there was a recurrence, again necessitating a work stoppage. Dr. Weil indicated that it was difficult to diagnose appellant's condition even with objective studies but that "certainly what happens is that something gets stuck and he just drops and is unable to support his weight on that hip." Appellant's condition improved with medication but was exacerbated with any type of pivotal rotational activity. Dr. Weil stated:

"I know this is confusing, as it is distressing to us to not be able to pinpoint this to a larger degree. However, [appellant] continues to have a similar symptomatology, the same as he did on the December 26, 2004 injury, which was reexacerbated further along on March 4, 2005. Again, I offer you the fact that both of these are the same injury just a reexacerbation and it would appear that what he does in the course of his daily work with [the employing establishment] continues to exacerbate and reinjure this particular problem."

In a report dated December 4, 2006, Dr. Weil diagnosed arthralgia, a right hip strain/sprain with bursitis and suspected internal derangement of the right hip. He asserted that the "mechanism of injury and the job activities are consistent with the current symptoms and aggravation of the original injury" and that the injury "was directly related to the injury of December 26, 2004 which was exacerbated on March 8, 2005." Dr. Weil referred to his August 23, 2005 letter for further information.

By decision dated January 2, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant merit review. The Office found that Dr. Weil attributed his condition to a December 26, 2004 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing 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.<sup>7</sup>

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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

Appellant attributed his right groin and hip condition to lifting and rotating at work. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed condition and the identified employment factors.

On October 18, 2006 Dr. Weil noted that appellant complained of hip pain. He diagnosed an aggravation of a previous work injury and found that he should remain "off work because he is making this worse." As Dr. Weil related appellant's condition to a prior employment injury, his opinion is insufficient to establish that he sustained a hip condition due to factors of his federal employment. Further, he did not provide a firm diagnosis of his condition.

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<sup>4</sup> See *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

Without a firm diagnosis supported by medical rationale, Dr. Weil's report is of little probative value.<sup>12</sup>

In a progress report dated October 30, 2006, Dr. Weil diagnosed arthralgia and a possible ilioinguinal ligament injury. He found that appellant was disabled from employment. In an accompanying duty status report, Dr. Weil diagnosed an aggravation of a groin injury and checked "yes" that the condition corresponded to the history provided on the form of appellant's physical therapist advising him that his condition had worsened. In an October 30, 2006 work restriction evaluation, Dr. Weil diagnosed chronic hip and groin pain and indicated that he could perform no activities, including walking, sitting or standing. In his October 30, 2006 narrative and form reports, he did not specifically address the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>13</sup>

In a disability certificate dated November 29, 2006, Dr. Weil indicated that appellant was unable to work from November 28, 2006 to January 10, 2007. Again, as he did not address causation, his report is of little probative value.<sup>14</sup> Additionally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>15</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>16</sup> He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>17</sup> Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>18</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously

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<sup>12</sup> See *Samuel Senkow*, 50 ECAB 370 (finding that as a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

<sup>13</sup> *Conrad Hightower*, *supra* note 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Laurie S. Swanson*, 53 ECAB 517 (2002).

<sup>16</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>17</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>18</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof.<sup>22</sup> The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.<sup>23</sup> If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

The Office denied appellant's claim on the grounds that the medical evidence was insufficient to show that he sustained a condition causally related to the established work factors. With his request for reconsideration, appellant submitted August 23, 2005 and December 4, 2006 medical reports from Dr. Weil. On August 23, 2005 Dr. Weil noted that he began treating appellant for right hip pain after he sustained a work injury on December 26, 2004. He was unable to diagnose his exact condition. Appellant improved with treatment and returned to work but had to again stop work. Dr. Weil opined that appellant's problem was a reexacerbation of his earlier injury and that "it would appear that what he does in the course of his daily work with [the employing establishment] continues to exacerbate and reinjure this particular problem."

In a report dated December 4, 2006, Dr. Weil diagnosed arthralgia, a right hip strain or sprain with bursitis and possible right hip internal derangement. He related that the "mechanism of injury and the job activities are consistent with the current symptoms and aggravation of the original injury" and that the injury "was directly related to the injury of December 26, 2004 which was exacerbated on March 8, 2005."

In its January 27, 2007 decision, the Office found that appellant did not submit sufficient medical evidence to warrant a merit review of his claim. The Office indicated that Dr. Weil

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<sup>19</sup> 20 C.F.R. § 10.606(b)(2).

<sup>20</sup> 20 C.F.R. § 10.607(a).

<sup>21</sup> 20 C.F.R. § 10.608(b).

<sup>22</sup> *Donald T. Pippin*, 53 ECAB 631 (2003).

<sup>23</sup> *Id.*

<sup>24</sup> *See Annette Louise*, 53 ECAB 783 (2003).

addressed only a December 26, 2004 employment injury. Dr. Weil's August 23, 2005 and December 4, 2006 reports, however, are relevant to the issue of whether appellant sustained a condition causally related to employment factors and were not previously of record. While he attributed appellant's right hip problems and arthralgia in part to a prior employment injury, he also found that work factors exacerbated his condition.<sup>25</sup>

In order to require merit review, it is not necessary that the new evidence be sufficient to discharge appellant's burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.<sup>26</sup> As Dr. Weil's August 23, 2005 and December 4, 2006 reports constituted new and relevant medical evidence, the Board finds that the Office improperly denied his request for review of the merits of the claim. The case will be remanded to the Office to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, the Office shall issue a merit decision on the claim.<sup>27</sup>

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a groin or hip condition causally related to factors of his federal employment. The Board further finds that the Office improperly denied reopening his case for further review of the merits of his claim under 5 U.S.C. § 8128.

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<sup>25</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

<sup>26</sup> See *Donald T. Pippin*, *supra* note 22.

<sup>27</sup> Subsequent to the Office's January 22, 2007 decision, appellant submitted new medical evidence. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 22, 2007 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board. The decision dated December 13, 2006 is affirmed.

Issued: December 12, 2007  
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