



October 31, 2001 lifting a facsimile machine out of a vehicle. The Office accepted his claim for cervical strain and a displaced cervical intervertebral disc without myelopathy.

Appellant received treatment for his cervical spine beginning November 2, 2001 from Dr. Brian Itagaki, a Board-certified orthopedic surgeon. On November 2 and 23, 2001 Dr. Itagaki listed findings of full range of motion of the lumbar spine without pain. On December 10, 2001 he noted that appellant experienced low back pain after traveling on an airplane for work. In a progress report dated January 4, 2002, appellant complained of pain in his mid to lower back. Dr. Itagaki diagnosed acute cervical and lumbar strain. In progress notes dated February 2002 through December 2002, he continued to complain of low back pain. In a progress report dated August 26, 2002, appellant attributed his low back pain to performing work on his computer. On October 28 and November 25, 2002, he complained of low back pain while performing his employment duties. On December 16, 2002 appellant noted that his neck and low back symptoms improved after he obtained an ergonomic chair and desk, but that he continued to have low back pain at work.

A magnetic resonance imaging (MRI) scan performed on February 25, 2003 revealed a large disc extrusion at C6-7. An MRI scan of the lumbar spine performed on January 28, 2004 showed mild disc bulges at L3-4, L4-5 and L5-S1 with moderate facet disease at L4-5. On October 12, 2004 Dr. Lytton A. Williams, a Board-certified orthopedic surgeon, performed an anterior cervical arthrodesis and discectomy at C6-7. He released appellant to modified employment on December 1, 2004 and to his regular employment on June 22, 2005.

On February 27, 2006 appellant filed a claim for compensation from that date through May 27, 2006. In a form report dated February 27, 2006, Dr. Williams diagnosed a herniated disc at L4-5 and checked "yes" that the condition was caused or aggravated by employment. He listed the history of injury as prolonged sitting and lifting and opined that appellant was disabled from February 27 to May 27, 2006. In a narrative report of the same date, Dr. Williams listed findings on examination and diagnosed a herniated disc at L4-5. He recommended a discectomy at L4-5.

By letter dated March 22, 2006, the Office informed appellant that it had not accepted his claim for a herniated lumbar disc. It requested that he submit a reasoned medical report addressing why his condition was causally related to his October 31, 2001 employment injury. The Office noted that, if appellant attributed his back condition to new work factors, he should file an occupational disease or traumatic injury claim.

On March 27, 2006 Dr. Williams stated:

"The date of injury was obtained on October 31, 2001 for which [appellant] sustained injury to his neck and low back. This was treated prior by Dr. Itagaki and then later by me. [Appellant's] MRI [scan] revealed a C6-7 herniated disc and [he] underwent a C6-7 cervical spine fusion.

"During [appellant's] recuperation of the herniated disc and the lumbar injury he sustained, he started having increasing pain. An MRI [scan] was done which showed an L4-5 herniated disc. This is all related to the original injury."

Dr. Williams diagnosed a left-sided herniated disc at L4-5 and recommended surgery. By decision dated May 16, 2006, the Office denied appellant's claim for compensation beginning February 27, 2006. It found that he had not established that he sustained a lumbar condition or that he required lumbar surgery due to his October 31, 2001 employment injury.

On May 23, 2006 appellant requested an oral hearing. He submitted progress reports from Dr. Williams regarding his lumbar condition. On August 22, 2006 Dr. Williams performed a lumbar discectomy at L4-5.

In a report dated August 9, 2006, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, discussed appellant's history of an October 31, 2001 injury and subsequent medical treatment.<sup>1</sup> He noted his current complaints of neck, right shoulder, right wrist and back pain. Dr. Tauber reviewed the medical reports of record and listed findings on examination. He diagnosed status post anterior cervical discectomy and fusion, sciatica, bilateral carpal tunnel syndrome and possible shoulder derangement. Dr. Tauber stated:

“With respect to the specific issues in this matter, it should be noted that the initial records of Dr. Itagaki and of the therapist do not seem to support a specific lumbar injury as a result of the work incident of October 31, 2001. However, it remains my opinion that his lumbar condition is in fact related to his employment duties. [Appellant] worked for the [employing establishment] from August 4, 1986 through February 27, 2006. This is a period of 20 years. Over that 20-year period, he performed extensive repetitive and demanding duties that have been well outlined in his description of his employment and have been taken into account by all of his treaters.

“If one carefully examines the report of the MRI [scan] of the lumbar spine, [appellant] has multilevel degenerative disease with narrowing of the canal. Multilevel involvement is noted. It would be medically inconceivable that an individual would carry out demanding duties as were carried out by [appellant], without any contribution to the degeneration of his spine.”

Dr. Tauber opined that both work activities and the activities of daily living contributed to appellant's degenerative disc disease of the spine.

In a letter to the hearing representative dated October 31, 2006, appellant's attorney contended that appellant's claim should be expanded to include an aggravation of degenerative disc disease, a herniated lumbar disc at L4-5, bilateral carpal tunnel syndrome and bilateral mild ulnar sensory neuropathy. He asserted that Dr. Itagaki, Dr. Williams and Dr. Tauber related appellant's low back condition due to the October 31, 2001 lifting incident and his work duties. At the hearing, held on November 1, 2006, appellant's attorney attributed his lumbar condition to both the October 31, 2001 lifting incident and his employment duties. His attorney indicated that he would file another claim for his carpal tunnel syndrome.

By decision dated January 5, 2007, the Office hearing representative affirmed the May 16, 2006 decision after finding that appellant did not submit sufficient evidence to establish

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<sup>1</sup> Appellant provided Dr. Tauber with a description of his employment duties.

that his disability beginning February 27, 2006 was due to his October 31, 2001 employment injury.

### **LEGAL PRECEDENT**

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 of the Act; 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 upon a traumatic injury or an occupational disease.<sup>3</sup>

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>4</sup> 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>5</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>6</sup> and must be one of reasonable medical certainty<sup>7</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained cervical strain and a displaced cervical intervertebral disc on October 31, 2001 after lifting a facsimile machine out of a vehicle. On October 12, 2004 Dr. Williams performed a discectomy at C6-7. He released him to return to work with restrictions on December 1, 2004 and to his usual employment on June 22, 2005.

On February 27, 2006 appellant filed a claim for disability compensation from that date through May 27, 2006. The Board finds, however, that the medical evidence is insufficient to establish that he was disabled beginning that date due to his accepted October 31, 2001 employment injury. In a report dated February 27, 2006, Dr. Williams diagnosed a herniated lumbar disc at L4-5 and recommended a discectomy. In an accompanying form report of the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Calvin E. King*, 51 ECAB 394 (2000); *Caroline Thomas*, 51 ECAB 451 (2000).

<sup>4</sup> *John J. Montoya*, 54 ECAB 306 (2003).

<sup>5</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> *John W. Montoya*, *supra* note 4.

<sup>8</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

same date, he diagnosed a herniated L4-5 disc and checked “yes” that the condition was due to employment injury. Dr. Williams provided a history of injury as prolonged sitting and lifting. He found that appellant was disabled from February 27 to May 27, 2005. As Dr. Williams attributed appellant’s herniated disc at L4-5 to prolonged lifting and standing rather than his October 31, 2001 employment injury, his opinion is insufficient to meet appellant’s burden of proof.

In a report dated March 27, 2006, Dr. Williams noted that appellant injured his neck and low back on October 31, 2001. After his surgery to repair a herniated disc at C6-7, appellant began experiencing increased pain. An MRI scan revealed a herniated disc at L4-5. Dr. Williams stated, “This is all related to the original injury.” He did not, however, provide any rationale for his conclusion that appellant’s lumbar herniated disc was related to his October 31, 2001 employment injury. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant’s diagnosed medical condition.<sup>9</sup> A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant’s accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant’s burden of proof.<sup>10</sup>

Dr. Tauber, in an August 9, 2006 medical report, found that appellant’s low back condition was not due to his October 31, 2001 employment injury. He noted that the reports from Dr. Itagaki immediately following his lifting injury did not indicate a low back injury. Dr. Tauber attributed appellant’s back condition to performing “extensive repetitive and demanding duties” during the course of his 20-year employment.

Appellant, consequently, has failed to submit rationalized medical evidence sufficient to show that he sustained a low back condition causally related to his October 31, 2001 employment injury. He has, however, alleged that his lumbar condition resulted, in part, from the performance of his employment duties. In a letter dated October 31, 2006, appellant’s attorney requested that the Office expand acceptance of his claim to include a herniated lumbar disc and an aggravation of degenerative disc disease. At the hearing, he attributed his low back condition to both his October 2001 employment injury and his work duties. Appellant’s claim, consequently, may more properly be characterized as a claim for an occupational disease as it appears to have occurred over a period of time.<sup>11</sup> It is well established that a claim for compensation need not be filed on any particular form. A claim may be made by filing any paper containing words which reasonably may be construed or accepted as a claim.<sup>12</sup> Letters and statements in amplification and expansion of a claim are as much a part of a claim as the claim form itself. Upon return of the case record, the Office should adjudicate appellant’s occupational disease claim.

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<sup>9</sup> See *John W. Montoya*, *supra* note 4.

<sup>10</sup> See *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>11</sup> An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>12</sup> *Barbara A. Weber*, 47 ECAB 163 (1995).

**CONCLUSION**

The Board finds that appellant has not established that his low back condition and resulting disability beginning February 27, 2006 are causally related to his October 31, 2001 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 5, 2007 is affirmed.

Issued: December 3, 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