

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES G. ECKERT and DEPARTMENT OF DEFENSE,  
DEFENSE CRIMINAL INVESTIGATION SERVICE, Arlington, VA

*Docket No. 99-640; Submitted on the Record;  
Issued October 5, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a back condition in the performance of duty.

On August 27, 1997 appellant, then a 52-year-old special agent, filed a notice of recurrence of disability causally related to his November 3, 1994 employment injury.<sup>1</sup> Appellant related that, following his 1994 employment injury, accepted by the Office of Workers' Compensation Programs for lumbosacral strain, he "continued to have pain and stiffness at all times, which is centered at the point of the original injury in my lower back on a constant, daily, basis." He stated:

"The only change in my condition that I detected following the [f]all of 1995 was that the numbness became slightly more acute with the sensation extending up through the calves of my legs and through my knees. In February and March 1997, I notice[d] that the numbing condition in my legs was growing worse, with much shorter walking/running distances required to start the numbness in my right leg or both legs. I noticed this particularly when taking physical training or when traversing airports while carrying moderate amounts of weight. By April 1997, the onset of numbness in the right leg or both legs, would begin after walking only about 50 to 75 yards."

Appellant listed the dates that he experienced the numbing sensation during physical training and carrying luggage while on travel status.

By letter dated December 3, 1997, the Office informed appellant that it was adjudicating his claim as an occupational disease claim and requested that he submit a rationalized medical report addressing the relationship of his condition to factors of his federal employment.

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<sup>1</sup> Appellant injured his back on November 3, 1994 moving furniture at work.

By decision dated February 6, 1998, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury as alleged.

By letter dated March 9, 1998, appellant requested reconsideration of his claim, which the Office denied in a merit decision dated May 28, 1998.

In a letter dated August 25, 1998, appellant again requested reconsideration of his claim and submitted additional evidence. By decision dated October 14, 1998, the Office found that the evidence submitted was insufficient to warrant modification of its prior decisions.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim, including that fact that an injury was sustained 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>

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 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>4</sup> The medical evidence required to establish a causal relationship, generally is rationalized medical opinion evidence.<sup>5</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. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty<sup>7</sup> and must be supported by medical rationale explaining the nature

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

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. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.<sup>9</sup>

In this case, appellant alleged that he sustained a back condition causally related to his employment. Although the Office accepted the occurrence of the claimed employment factors, appellant has not submitted sufficient medical evidence to establish that he sustained an occupational injury due to these factors.

In support of his claim, appellant submitted a report dated August 5, 1997 from Dr. Keith G. Scott, who stated:

“I have consulted with [appellant] concerning his complaints of increasing numbness in his legs that seems to be emanating from the point of his November 1994 lower back injury. Based upon the symptoms that he is now describing, it is likely that there may be a disc protruding or ruptured in his lower back.”

Dr. Scott did not address the cause of appellant’s condition and thus his report is of diminished probative value.<sup>10</sup>

In an office visit note dated September 25, 1997, Dr. Robert B. Stinger, a Board-certified orthopedic surgeon, indicated that appellant related that he experienced numbness in his legs beginning in 1994 when he injured his back moving furniture. He diagnosed spinal stenosis and bilateral lower extremity numbness. Dr. Stinger recommended objective testing to determine whether appellant had a peripheral neuropathy or nerve root compression due to spinal stenosis. As Dr. Stinger did not address the cause of the diagnosed conditions, his report is insufficient to meet appellant’s burden of proof.<sup>11</sup>

In an office visit note dated October 10, 1997, Dr. Stinger found that the results of an EMG [electromyogram] showed “a sensory motor neuropathy of the axonal variety, which appears to be nondiagnostic.” He diagnosed “[n]umbness bilateral lower extremities, degenerative disc disease with spinal stenosis, status post lifting injury” and related, “[a]t this

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<sup>8</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

<sup>10</sup> A magnetic resonance imaging (MRI) study obtained on September 12, 1997, revealed at L3-4 and L4-5 “diffuse disc bulging and facet hypertrophy, causing spinal stenosis and narrowing of the neural foramina” without evidence of disc herniation.

<sup>11</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence, which does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship).

point I have no objective evidence that [appellant's] current complaints of numbness in his legs are of any causal relationship to his lifting injury other than the temporal relationship. I was hoping that this issue would be clarified by neurologic consultation." Dr. Stinger did not find that appellant's complaints were causally related to his employment and thus his opinion is of diminished probative value. Further, while Dr. Stringer noted that appellant's symptoms began following a prior lifting injury, the Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient without supporting rationale to establish causal relationship.<sup>12</sup>

In a form report dated October 10, 1997, Dr. Stinger diagnosed low back pain syndrome and checked "yes" that the condition was related to employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>13</sup>

In a report dated November 6, 1997, Dr. Christopher S. Holland, an employing establishment physician, noted that appellant had "chronic low back pain and known degenerative disc disease. His current complaints apparently represent an extension of the acute back injury he claims to have sustained moving furniture at work in November 1994. The employee's current complaints are numbness (not pain) in both lower extremities." Dr. Holland stated:

"With regard to causation, in my opinion [appellant's] degenerative disc disease, which appears to be his underlying medical condition, should not be attributed to his work activities. However, if his current complaints can be reasonably related to structural changes following his acute injury in November 1994, then his additional medical evaluation and care may be considered a legitimate [w]orkers' [c]ompensation expense."

Dr. Holland speculated on the cause of appellant's condition but did not reach a specific conclusion regarding causation. As his opinion is equivocal and couched in speculative terms, it is of diminished probative value.<sup>14</sup>

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<sup>12</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>13</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>14</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions, which are speculative or equivocal in character have little probative value).

In a report dated January 21, 1998, Dr. James F. Grim, a Board-certified neurologist, discussed appellant's history of a work injury in November 1994 while moving furniture.<sup>15</sup> He diagnosed lumbar stenosis with lumbar claudication and indicated that he had referred appellant for a surgical consultation. Dr. Grim stated:

"While I doubt that [appellant's] lumbar stenosis originated at the time of his initial injury in 1994, it may well have caused difficulties in his spine as a result of the injury on the job, which have led to increased symptoms. Said somewhat differently, the injury on the job may well have exacerbated his underlying spinal stenosis."

Dr. Grim's opinion that appellant's prior employment injury "may well" have aggravated his preexisting spinal stenosis is, without further explanation, speculative in nature and thus of little probative value. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can the opinion be speculative or equivocal.<sup>16</sup> To be of probative value, the opinion of a physician on causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.<sup>17</sup>

In a report dated August 5, 1998, Dr. Clifford T. Solomon, a neurosurgeon, discussed appellant's November 3, 1994 employment injury and complaints of numbness beginning in his feet and subsequently moving throughout his legs. Dr. Solomon stated:

"On review of [appellant's] diagnostic studies, it was apparent he had severe spinal stenosis at L3-4 and L4-5. His symptoms were a direct result of the injury he sustained at work when he pulled his low back beyond the physiologic limits."

"On May 18, 1998 he underwent bilateral laminotomies complicated by a small CSF [cerebrospinal fluid] leak that persisted for a few days."

"It is within a reasonable degree of medical certainty that his problem was a direct result of the injury sustained in November, 1994."

Dr. Solomon did not explain, with reference to the specific facts of the case, how appellant's 1994 lumbosacral strain or other factors of employment caused or aggravated his

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<sup>15</sup> In a letter to Dr. Grim dated October 17, 1997, Dr. Stinger related that appellant "was in his usual good state of health until he reportedly sustained a back injury from moving a lot of heavy furniture in November, 1994." He noted that after the injury appellant experienced numbness in his lower extremities and requested that Dr. Grim's comment on "whether or not [appellant's] numbness is in any way related to his lifting injury and whether this is something that can be ascertained with any level of certainty."

<sup>16</sup> *Roger Dingess*, 47 ECAB 123 (1995).

<sup>17</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

spinal stenosis. As Dr. Solomon provided little rationale in support of his stated conclusion, his opinion is insufficient to establish appellant's claim.<sup>18</sup>

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his/her condition and his/her employment.<sup>19</sup> To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his/her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>20</sup> Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated October 14, May 28 and February 6, 1998 are affirmed.

Dated, Washington, DC  
October 5, 2000

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>18</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relation are entitled to little probative value).

<sup>19</sup> *William S. Wright*, 45 ECAB 498 (1993).

<sup>20</sup> *Id.*