

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH EDWARD THACKER and DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, INFORMATION SERVICES DIVISION,
Clarksburg, WV

*Docket No. 99-2282; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a herniated disc causally related to his July 17, 1998 employment injury.

On July 17, 1998 appellant, then a 43-year-old utility systems repair operator, filed a claim for traumatic injury (Form CA-1) alleging that on that day he injured his lower back when attempting to prevent a fall while in the performance of duty.

In an attending physician's report dated July 23, 1998, Dr. Nelson who specializes in family medicine, diagnosed appellant with a lumbosacral strain and released him to full duty that day. He noted that appellant was "to return (in) one week if not better." Dr. Nelson further noted that he had relied on x-rays of the lumbosacral spine which revealed "herniated disc, degenerative joint disease, mild."

In a medical report dated July 18, 1998, Dr. Frederick J. Gabriele, Board-certified in nuclear radiology, read x-rays taken that day as revealing degenerative disc disease at the L3-4 and L5-S1 levels.

In a medical report dated August 15, 1998, Dr. P. Bradley Hall, Board-certified in family practice, related appellant's history of injury stating that appellant "hurt low back when he pulled something. Had a similar episode a month ago, got better, started to get bad again. Has pain down the back of the right leg." He noted that his brief examination was normal "except for diffuse tender paralumbar muscle to palpitation and range motion. Straight leg raising negative. Neurologically intact." Dr. Hall stated that appellant had "lumbosacral strain with sciatic pain, probable herniated nucleus pulposus on x-ray review with narrow L3-4 and L5-S1." He ordered a magnetic resonance imaging (MRI) scan.

In a medical report dated August 16, 1998, Dr. Timothy B. Hetzer, Board-certified in nuclear radiology, read appellant's MRI scan of August 15, 1998 and stated that appellant had degenerative disc disease at L3-4 and mild degenerative changes. No acute process or interval change."

In a medical report dated September 2, 1998, Dr. William M. Almasy, Board-certified in nuclear radiology, stated that an August 30, 1998 unenhanced MRI scan revealed midline disc herniations at T12-L1 and L1-2, broad based disc bulging, L3-4 and left lateral disc herniation at L4-5.

In a medical report dated September 22, 1998, Dr. Hall stated that an unenhanced MRI scan taken that day revealed midline disc herniations at T12-L1 and L1-2, broad based disc bulging, L3-4 and left lateral disc herniation at L4-5.¹

By letter dated October 14, 1998, the Office of Workers' Compensation Programs advised appellant that it had accepted his claim for treatment of lumbosacral strain and that it had approved payment of the August 30, 1998 MRI scan. However, the Office further noted that it had not approved payment of the September 22, 1998 MRI scan and had not approved treatment for herniated disc or any related surgeries. The Office noted that appellant's doctor should submit a rationalized medical opinion establishing a causal relationship between appellant's work-related condition and the need for surgery.²

In a medical report dated October 2, 1998 and received by the Office on October 15, 1998, Dr. James D. Weinstein, appellant's treating physician and Board-certified in neurological surgery, stated that a September 30, 1998 MRI scan revealed "moderate disc herniation at T12-L1, small herniation at L1-2, marked bulging at L3-4. Far left herniation on the left at 4-5 compromising the fat in the interior aspect of the 4-5 foramen on the left, at L5-S1, some protrusion or herniation in lateral recesses, more on the right." In a medical report dated October 5, 1998 and received by the Office on October 19, 1998, Dr. Weinstein stated that appellant's myelogram/computerized tomography (CT) scan focused on appellant's L5-S1 on the right as a "major problem ... causing his difficulties." He noted that he could "do a lumbar hemi-laminectomy and discectomy at L5-S1 on the right and help the patient quite a bit."

In a medical report dated October 20, 1998, Dr. Weinstein noted that appellant "[A]pparently, ... does some maintenance work at the [employing establishment]" and essentially repeated his prior report. In a letter dated December 9, 1998, the Office advised appellant that his request for surgery was denied on the grounds that there was no causal relationship between appellant's work-related injury and his doctor's request for authorization to perform surgery. The Office stated that appellant had a degenerative back condition but that his "back had cleared up from the work injury, which had been accepted for a lumbosacral sprain only," and that his current problems are related to his degenerative back condition and his weight.

¹ The Board notes that the impressions of the August 30 and September 22, 1998 MRI scans are the same.

² The Board notes that the initial reference to the September 22, 1998 MRI scan was received by the Office on August 15, 1998.

By letter dated December 20, 1998, appellant requested reconsideration.

By decision dated February 5, 1999, the Office denied appellant's claim for an expansion a herniated disc and related surgery. In an attached memorandum, the Office noted that Dr. Weinstein's medical reports dated October 5 and 20, 1998 failed to provide a rationalized medical opinion establishing a causal relationship between appellant's herniated disc and his accepted injury.³

By letter dated February 11, 1999, appellant requested reconsideration. He attached a January 15, 1999 medical report from Dr. Adnan A. Ablu, Board-certified in neurological surgery, who noted a familiarity with appellant's history of injury and examined him on that day. Dr. Ablu noted that appellant's lumbar spine revealed no evidence of a paravertebral muscle tightness or tenderness, point tenderness over the coccyx and focal tenderness at the S1 joint. Straight leg raising was negative bilaterally at 90 degrees, sensation decreased to pin appreciation over the right L4-5 and S1 dermatome levels. Reflex testing was present and symmetrical throughout lower extremities." He noted:

"In light of the fact that (appellant) is presenting with no motor or neurological defects, I do not feel any surgical interventionist would be of benefit. However, I feel that these symptoms are arising from an inflammatory process of the right S1 joint."

By merit decision dated April 20, 1999, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that he sustained a herniated L4-5 disc, causally related to July 17, 1998 work-related injury.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.⁴ Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.⁵

³ The Board notes that appellant's December 20, 1998 letter requesting reconsideration was premature in that the Office had not yet issued a decision on the merits with appeal rights attached.

⁴ *Steven R. Piper*, 39 ECAB 312 (1987); see 20 C.F.R. § 10.110(a).

⁵ *Id.*

Causal relationship is a medical issue that can be established only by medical evidence.⁶ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁷

In this case, none of the medical reports submitted by appellant address the development of his herniated disc condition in relation to the accepted injury of July 17, 1998. For example, Dr. Nelson noted in his July 17, 1998 report that appellant had a preexisting herniated disc. However, he failed to establish a causal relationship between that condition and appellant's work-related injury. Further, although the reports of Drs. Hall and Weinstein note the presence of several disc conditions, none of the reports establish that those conditions were related to appellant's work-related injury. In fact, Dr. Hall noted in his August 15, 1998 report that appellant's July 17, 1998 incident had resolved. Dr. Weinstein's October 5, 1998 report requesting authorization for surgery did not address the cause of appellant's condition, nor did he address its preexisting condition as noted by Dr. Nelson in his July 17, 1998 report. Dr. Weinstein also did not demonstrate a familiarity with appellant's history of injury noting that "[A]pparently, [appellant] does some maintenance work at the [employing establishment]." Also, Dr. Abl's report, submitted in support of appellant's request for reconsideration, failed to diagnose a herniated disc. Absent a rationalized medical opinion establishing a causal relationship between appellant's herniated disc and his work-related injury, none of the medical reports establish a causal relationship between appellant's herniated disc and his work-related injury. Because the medical reports submitted omit discussion of how the July 17, 1998 incident caused pathology at L5-S1 on the right they are insufficient to establish that the July 17, 1998 incident caused a herniated disc or the need for surgery. Accordingly, appellant has not established that he sustained an L4-5 herniated disc causally related to the accepted employment incidents. His request for authorization for surgery contained in a letter dated October 5, 1998 by Dr. Weinstein is also denied.

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

The decisions of the Office of Workers' Compensation Programs dated April 26 and February 5, 1999 are affirmed.

Dated, Washington, DC
October 20, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member