



## **FACTUAL HISTORY**

On July 16, 2002 appellant, then a 33-year-old border patrol agent, filed a claim alleging that on July 1, 2003 she developed numbness of the right foot and hamstring due to prolonged sitting which was required as part of her job. Appellant did not stop work.<sup>1</sup>

Appellant submitted a report from Dr. Thomas N. Harris, a Board-certified anesthesiologist, dated July 10, 2002 which diagnosed possible L5 radiculopathy with possible herniated nucleus pulposus (HNP). He noted findings upon physical examination of tenderness over the paraspinal muscles, numbness over the L5 distribution and dorsum of the first web space of the right foot and positive straight leg raise testing on the right. Dr. Harris advised that the aforementioned injuries were a direct result of the accident of January 17, 1995 as the mechanism of the accident and the findings upon physical examination were consistent with the injury. Dr. Harris noted that appellant sustained a previous work injury which developed while she was at work in a prolonged sitting position. He indicated that this was definitely a work-related injury and that appellant was temporarily totally disabled.

By letter dated August 6, 2003, the Office advised appellant that the evidence submitted was insufficient to establish that she sustained an injury in the performance of duty. The Office requested that appellant submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed condition.

Appellant submitted a narrative statement dated September 8, 2003 which advised that on July 1, 2003 she was sitting in her service vehicle and experienced numbness in her right foot

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<sup>1</sup> This claim was filed as a recurrence of disability, with appellant noting a January 17, 1995 employment injury. In a letter dated August 6, 2003, the Office advised appellant that her claim would be developed as a new occupational disease because the medical evidence from 1995 indicated that her accepted back condition had resolved.

and waist. She noted that she wore a duty holster with a walkie-talkie, collapsible baton, handcuffs, pepper spray and a firearm. Appellant noted that her physician believed her condition was related to her previous injury of January 1995. She sought the treatment of a massage therapist as well as a chiropractor which provided some relief from the symptoms in her hip and back; however, she still experienced numbness and tingling in her foot.

In a decision dated September 17, 2003, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act 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 timely filed within the applicable time limitation period of the Act, that the 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. 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>

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) factual statement identifying employment factors alleged to have caused or contributed to the presence

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

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. The medical evidence required to establish causal relationship is generally 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. 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.<sup>4</sup>

### **ANALYSIS**

Appellant alleged that she developed numbness of the right foot and hamstring on July 1, 2003 as a result of her employment duties. The Board finds, however, that the medical evidence is insufficient to establish that appellant developed numbness of the right foot and hamstring causally related to her employment duties. Appellant submitted treatment notes from Dr. Harris dated July 10, 2002 which diagnosed possible L5 radiculopathy with possible HNP. He noted positive physical findings over the paraspinal muscles, numbness over the L5 distribution, over the dorsum of the first web space of the right foot and positive straight leg raises on the right. Dr. Harris opined that the aforementioned injuries are a direct result of a January 17, 1995 employment injury. However, the Board finds that Dr. Harris did not provide a rationalized

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<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

opinion regarding the causal relationship between appellant's L5 radiculopathy and the contemporaneous factors of employment believed to have caused or contributed to such condition. While he attributed appellant's condition to an earlier injury in 1995, he did not explain with rationale how an injury that occurred more than seven years previously caused appellant's current condition.<sup>5</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>6</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.<sup>7</sup>

### **CONCLUSION**

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet her burden of proof.<sup>8</sup>

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<sup>5</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>6</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> The Board notes that appellant submitted additional evidence with her appeal. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This does not preclude appellant from submitting this evidence to the Office with a valid request for reconsideration pursuant to 5 U.S.C. § 8128(a).

<sup>8</sup> *See Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member