

<sup>1</sup> Oral argument scheduled for November 3, 2005 was canceled at appellant's request.

degenerative disc disease and a herniated lumbar disc while in the performance of duty. He first became aware of the condition on May 5, 2003. Appellant attributed his condition to driving tractor trailers and similar vehicles over a 10-year period. He alleged that the truck suspensions were too heavy and used inappropriate springs, causing him to jolt up and down while driving.<sup>2</sup>

In support of his claim, appellant submitted a June 17, 2003 report from Dr. Christopher D. Heffner, an attending Board-certified neurosurgeon, who diagnosed spondylolisthesis with spondylosis at L5-S1, degenerative disc disease and a herniated lumbar disc at L5-S1. He opined that appellant's back symptoms were triggered by his "riding in a vehicle with poor suspension."

In a July 31, 2003 letter, the Office advised appellant that Dr. Heffner's report was insufficient to meet his burden of proof. The Office requested that appellant submit additional evidence, including a report from his attending physician explaining how and why the identified work factors caused the claimed back condition.

Appellant submitted an August 2003 petition signed by 41 employing establishment drivers, contending that the "161/661 series Mack tractors' suspension" was "too heavy ... so that the shocks don't absorb any of the impact, and that the seats that maintenance installed [were] no good." He also submitted an August 8, 2003 email from the employing establishment, noting that it was investigating this problem and that using a two-leaf spring as opposed to a three-leaf spring would provide a better ride for the drivers.

By decision dated September 4, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the claimed lumbar condition and the identified employment factors.

In a September 8, 2003 form, appellant requested reconsideration. He submitted additional evidence, including a May 23, 2003 lumbar magnetic resonance imaging scan which showed a Grade 1/4 spondylolisthesis of the L5 upon the S1 with disc material projecting into and compressing the left L5 nerve root. The report also noted osteoarthritis of the right L4-5 facet joint. Appellant also submitted physical therapy notes of June 2003 and additional documents related to the mechanical properties of postal trucks.

In an August 19, 2003 report, Dr. Heffner set forth his findings on examination of appellant, who wanted to undergo surgery due to continuing lumbar pain with radiation into the hips and sacroiliac areas bilaterally. He stated that appellant had been using a truck with poor suspension and experienced "a repeated pounding type activity to his lower back from this vehicle, and this would therefore, be the most likely explanation as to the cause for his spondylolisthesis becoming worse to require the need for surgery." Dr. Heffner released appellant to return to work on August 20, 2003. On September 29, 2003 appellant underwent an L5-S1 laminectomy, fusion and fixation.

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<sup>2</sup> In August 5 and 8, 2003 statements, the employing establishment asserted that its trucks were properly maintained and that perhaps the difficulty was related to an improperly adjusted seat.

In an October 2, 2003 letter, the Office advised appellant that it had received his reconsideration request and determined that a second opinion examination was appropriate. On November 5, 2003 the Office referred appellant, the medical record and a statement of accepted facts, to Dr. Donald H. Brancato, a Board-certified orthopedic surgeon. In a December 5, 2003 report, Dr. Brancato reviewed appellant's history of injury and the laminectomy performed by Dr. Heffner. He stated that the findings prior to surgery were indicative of degenerative changes in the facet joints with a Grade 1 spondylolisthesis. Dr. Brancato listed appellant's condition as postsurgical fusion with internal fixation, but not current limitations. He stated:

"The second question as to whether there is a diagnosed condition [causally] related to the claimant's work injury, it is only relative to the cause of the nerve root irritation, that there would be a specific cause and effect related from an acute-type of an injury. On the other hand, the subluxation noted at L5 on S1 certainly could have been aggravated by his work activity. However, whether this was caused by a long history of repeated load and/or injury is certainly an undeterminable question at this stage. A diagnosis would have to be made, based on x-rays, prior to assuming his work activity, to connect it to the postal employment."

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"The claimant's work-related injury is related only by history. However, as previously noted, the spondylolisthesis is certainly a long-standing and involving type of problem, that would not be isolated to a specific acute injury."

By decision dated December 29, 2003, the Office denied appellant's claim. It found that Dr. Heffner's report was of diminished probative value as it was speculative and did not contain an accurate history of appellant's back condition. It was determined that the medical report of Dr. Brancato did not support a work-related connection between appellant's back condition and his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation 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 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 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>

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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 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. 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>5</sup>

### ANALYSIS

Appellant claimed that he sustained lumbar spondylolisthesis, spondylolitic degenerative disc disease and a herniated lumbar disc necessitating surgery due to driving trucks with inappropriate seating and suspension. In support of his claim, he submitted reports from Dr. Heffner, an attending Board-certified neurosurgeon. In a June 17, 2003 report, Dr. Heffner diagnosed several pathologies at L5-S1 and opined that appellant's back symptoms were triggered by "riding in a vehicle with poor suspension." On August 19, 2003 Dr. Heffner stated that the "poor suspension" caused "a repeated pounding type activity to [appellant's] lower back" which was the most likely explanation as to the cause for his spondylolisthesis becoming worse and requiring surgery. Dr. Heffner opined that appellant's driving a truck with poor suspension caused lumbar pain and aggravated his preexisting L5-S1 spondylolisthesis.

The Office referred appellant for a second opinion examination by Dr. Brancato, a Board-certified orthopedic surgeon. In a December 5, 2003 report, Dr. Brancato stated that appellant's back condition prior to surgery was indicative of degenerative changes in the facet joints with a Grade 1 spondylolisthesis. With regard to the issue of whether appellant's back condition was caused or aggravated by factors of his federal employment, Dr. Brancato stated that the subluxation of the L5 on the S1 "could certainly have been aggravated by his work activity. However, whether this was caused by a long history of repeated load and/or injury is certainly an undeterminable question at this stage." The Board finds that the report of Dr. Brancato is insufficient to resolve the issue of whether appellant's employment caused or aggravated his preexisting back condition and necessitated surgery. Dr. Brancato provided a cursory overview of appellant's federal employment and the implicated work factors and noted that, as a long-standing condition, the spondylolisthesis would not be isolated to a specific acute injury. However, the nature of the instant claim is one of occupational disease and not of traumatic injury. Dr. Brancato's opinion on causal relationship is not well reasoned and appears internally

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

inconsistent as he noted that the situation of the L5 on S1 could have been aggravated by appellant's work activities. Moreover, the physician did not address the issue of whether appellant's surgery was necessitated by the implicated employment factors. At best, the opinion is speculative and of diminished probative value. As the Office sought the opinion of Dr. Brancato, it has the responsibility to obtain a medical opinion that adequately addresses the issues presented in this case.<sup>6</sup>

The case is not in posture for decision. On remand, the Office should secure a medical report which contains a reasoned opinion on the relevant issues of whether appellant's back condition was caused or aggravated by the identified factors of employment and, if so, whether his employment contributed to the need for surgery. After such further development as the Office deems necessary, it should issue a *de novo* decision on his claim for benefits under the Act.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision. The claim requires further development of the medical evidence.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 29 and September 4, 2003 are set aside and the case remanded to the Office for further development consistent with this decision.

Issued: January 13, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *Mae Z. Hackett*, 34 ECAB 1421 (1983).