

In a report dated November 17, 2003, Dr. William C. Cheney, appellant's treating chiropractor, placed appellant on total disability from that date to November 19, 2003. In a

report dated November 19, 2003, Dr. Cheney restricted appellant from climbing and from walking, standing and sitting in excess of 50 percent of the working shift, and from lifting more than 10 pounds. He did not provide a diagnosis.

In a medical report dated November 21, 2003, Dr. David W. Malka, Board-certified in psychiatry and neurology, placed appellant in a total disability status.

In an injury report dated November 24, 2003, the employing establishment noted that appellant reported sustaining an injury on November 12, 2003 while pushing a heavy buggy and that she returned to duty on November 20, 2003. By letter dated December 3, 2003, the Office informed appellant of the type of evidence needed to support her claim.

In a report dated November 21, 2003, Dr. Malka noted a familiarity with appellant's employment history and noted that she had chronic minor low back discomforts. He related that, on November 12, 2003, while pushing a mail cart, appellant felt a pop in her back with acute exacerbation of pain. Dr. Malka noted that there was no radiation of pain but that there were muscle cramps in the inner thighs and numbness in her feet from the date of injury. He noted that appellant continued to work that day but could not walk the following day due to pain. Dr. Malka diagnosed an "exacerbation of chronic low back pain secondary to the work injury of November 12, 2003 with nonspecific leg cramps and feet numbness since" the date of injury. He restricted appellant to bed rest and requested a magnetic resonance imaging (MRI) scan of the lumbar spine.

On December 10, 2003 an MRI scan of the lumbar spine revealed diffuse disc disease and multilevel degenerative disc changes. In a duty status report dated December 11, 2003, Dr. Malka released appellant to limited duty on December 12, 2003 and listed restrictions.

By decision dated January 8, 2004, the Office found that the event occurred as alleged but denied the claim on the grounds that appellant submitted no evidence to support her claim that a medical condition arose as a result of the accepted incident. On February 17, 2004 appellant, through her representative, requested an oral hearing. The Office denied appellant's request on April 8, 2004 on the grounds that the request was untimely filed.

In a report dated March 26, 2004, Dr. H. Gerard Siek, appellant's Board-certified orthopedic surgeon, noted that she "has had no back problems before over the years." He reviewed the December 10, 2003 MRI scan and performed a physical examination including range of motion of the cervical spine. Dr. Siek determined that her injury was permanent and directly related to the incident at work on November 12, 2003 and recommended that she return to work on March 29, 2004 in a light-duty capacity with a lifting maximum of 20 pounds. In a report dated April 8, 2004, Dr. Siek determined that she had cervical spine strain, lumbar spine strain and tendinitis of the right hip.

On July 28, 2004 appellant requested reconsideration. In a report dated April 29, 2004, Dr. Siek noted that in the past week appellant was unable to perform her regular-duty position and stopped working. He released appellant to return to light duty and diagnosed recurrent lumbar disc syndrome and anxiety reaction with depression.

In a decision dated October 29, 2004, the Office modified its January 8, 2004 decision on the grounds that medical evidence containing diagnoses of conditions was submitted. However, the Office denied appellant's claim as the medical evidence did not include a rationalized medical opinion establishing a causal relationship between the diagnosed conditions and her work incident of November 12, 2003.

On September 28, 2004 Dr. David P. Kalin, appellant's treating physician and a family practitioner, noted a familiarity with appellant's history of injury and reviewed her medical records. He diagnosed chronic low back syndrome caused by an April 29, 1999 work-related injury, and the November 12, 2003 incident. Dr. Kalin found that she had reached maximum medical improvement from her April 29, 1999 and November 12, 2003 work-related incidents. However, he diagnosed dysthymia and depression secondary to her inability to return to work. Dr. Kalin placed appellant on restrictions requiring her to avoid overly strenuous repetitive or sudden movements of the neck and overly strenuous repetitive bending, twisting or lifting greater than 25 pounds, standing longer than 5 hours, walking longer than 4 hours and any and all other activities which may aggravate her underlying condition.

In a report dated March 25, 2005, Dr. Kevin Knezevich, an employing establishment physician, examined appellant and noted that an MRI scan revealed multilevel degenerative disc changes in her lumbosacral spine. He related appellant's history of injury including a work-related April 1999 back injury for which she received treatment and returned to work in July 2000. Dr. Knezevich stated that combining her degenerative disc changes and her obesity of over 100 pounds<sup>1</sup> her low back condition is exacerbated. He reviewed the functional requirements of the job of a rural letter carrier and noted the requirements of heavy lifting up to 70 pounds, walking for 8 or more hours, and standing for up to 8 or more hours, with repeated bending and climbing up to 8 hours.

On May 19, 2005 appellant, through her representative, requested reconsideration. The Office, in a decision issued on July 11, 2005, denied modification of its October 29, 2004 decision.

### **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 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>

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<sup>1</sup> Appellant was 5 foot 9 inches tall and weighed 290 pounds.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<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, 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between her condition and her employment.<sup>7</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 her condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>8</sup>

### **ANALYSIS**

In this case, the evidence established that the incident occurred on November 12, 2003 as alleged. Notwithstanding, the Board also finds that appellant has submitted insufficient medical evidence to establish a causal relationship between her medical condition and the November 12, 2003 employment incident.

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>6</sup> *Joan F. Burke*, 54 ECAB 406 (2003).

<sup>7</sup> *William S. Wright*, 45 ECAB 498, 503 (1993).

<sup>8</sup> *Calvin E. King*, 51 ECAB 394, 401 (2000).

The record includes reports from Dr. Cheney, appellant's treating chiropractor, dated November 17 and 19, 2003. Under section 8101(2) of the Act, "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."<sup>9</sup> In order for Dr. Cheney to be considered a "physician" under the Act, and therefore establish his reports as probative medical evidence, he must diagnose a subluxation as demonstrated by x-ray. He did not diagnose a subluxation as demonstrated by x-ray to exist. Accordingly, the Board finds that Dr. Cheney is not a "physician" under the Act and his reports are of no probative medical value to appellant's claim.

Dr. Malka, in a medical report dated November 21, 2003, noted a normal physical examination including no spinal spasms or point tenderness with full range of motion, appellant's neurological examination was normal throughout. His diagnosis of low back pain secondary to the work-related injury of November 12, 2003 is unsupported by medical rationalize and thus is of limited probative value.<sup>10</sup> For example, Dr. Malka did not explain why appellant's condition was not attributable to her preexisting chronic low back condition that he noted in his report. Dr. Siek's March 26 and April 8, 2004 reports noted that appellant had no prior back problems and no complaints of back pain before. However, other medical evidence indicates that appellant had a back injury in April 1999 for which she received treatment and returned to work in July 2000. These reports are of diminished probative value because they are not based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>11</sup> In neither report does Dr. Siek provide a rationalized medical opinion establishing a causal relationship between appellant's condition and her work-related incident of November 12, 2003. Likewise, Dr. Siek's April 29, 2004 report includes no opinion on causal relationship.

Dr. Kalin's September 28, 2004 report determined that appellant's condition was caused by her April 1999 back injury and exacerbated by her November 2003 work-related incident. However, he does not explain how the incident of November 12, 2003 exacerbated her low back injury which initially occurred on April 29, 1999. Although Dr. Kalin refers to the December 10, 2003 MRI scan study, that study revealed diffuse disc disease and degenerative changes. For example, he did not explain how the work incident of November 12, 2003 caused or aggravated her degenerative disc disease. Dr. Kalin also diagnosed various other conditions such as dysthymia and depression but did not provide any explanation as to how or why these conditions would be caused or aggravated by the November 12, 2003, employment incident. As such, his opinion has insufficient medical reasoning to support his conclusion on causal relationship.

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<sup>9</sup> 5 U.S.C. § 8101(2); *Carmen Gould*, 50 ECAB 504 (1999).

<sup>10</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>11</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305, 311 (1988).

There is insufficient medical evidence before the Board which explains how the November 12, 2003 incident caused or aggravated a specific condition. Either the medical evidence submitted did not specifically address causal relationship or failed to include a rationalized medical opinion, based on an accurate factual background, establishing a causal relationship. Because there is no medical evidence explaining how the employment incident caused or aggravated a diagnosed condition, appellant has not met her burden of proof in establishing her claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 11, 2005 and October 29, 2004 are affirmed.

Issued: January 20, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board