



mid-September 2004. He first realized that his condition was caused by his employment on October 12, 2004.

Appellant submitted a report of a magnetic resonance imaging (MRI) scan of the cervical spine dated November 6, 2004 reflecting an impression of degenerative changes at C4-5, C5-6 and C6-7 levels. He submitted a November 18, 2004 note bearing an illegible signature recommending "no lifting over 5 to 10 pounds." A note signed by staff nurse Leslie Briggs dated November 18, 2004 indicated that appellant was treated on that date for reported generalized arthritic pain in all joints, which he had experienced for the past two months with increasing intensity.

In a January 21, 2005 narrative statement, appellant indicated that he had been experiencing problems with his neck since a February 1993 automobile accident, but that his problems with his arms and hands began in September 2004. He indicated: since August 2004, his condition had been exacerbated by his employment duties, including lifting boxes weighing 20 to 30 pounds while processing mail; handling 200 to 250 cases per month; holding a telephone with his neck and shoulder because he did not have a head set; twisting his neck constantly from his computer to his files; and stapling cases.

In a medical certificate dated January 19, 2005, Nancy Wasson, a registered nurse, stated that appellant should avoid fine manipulation with both hands for two weeks. Appellant submitted reports bearing illegible signatures dated January 17, 25 and 27, 2005 reflecting treatment for work-related bilateral hand pain and stiffness and restricting appellant from fine manipulation or gripping with both hands for four weeks.

Appellant submitted medical reports, physical therapy notes and accident reports relating to his February 1993 motor vehicle accident, including a February 22, 1993 emergency room report reflecting acute cervical sprain and blunt abdominal trauma resulting from a motor vehicle accident and a March 29, 1993 attending physician's report from Dr. John A. Stand, a treating physician, diagnosing cervical neck strain/myositis pursuant to a February 22, 1993 motor vehicle accident. He also submitted an October 27, 1993 physical therapy report; medical notes bearing an illegible signature for treatment for back and neck pain from March 5 through December 20, 1993; physical therapy notes from September 15 through 29, 1994; and a September 22, 1994 functional capacity evaluation and report. In a February 9, 1995 report performed for State Farm Insurance, Dr. Edward B. Trachtman, a Board-certified physiatrist, opined that appellant's low back was functional and that he could do moderate work. A May 23, 1994 report from Dr. Philip J. Baty, a Board-certified physician in the area of family medicine, stated that, although he was unable to determine the cause of appellant's left upper extremity weakness and back pain, he suspected that it was due to an underlying degenerative disease.

Appellant submitted a case history and unsigned physician's notes dated May 26, 1999 reflecting that he injured his neck and back when he bent and twisted while getting dressed on May 25, 1999. Appellant also submitted a June 17, 1999 MRI scan report; an unsigned electromyography (EMG) report dated July 13, 1999 from a Dr. Henry Tong reflecting no electrodiagnostic evidence of a left upper extremity radiculopathy, plexopathy or mononeuropathy; and unsigned physician's notes dated January 12, 2000 from

Dr. S. Kondapaneni, a treating physician, who saw appellant for pain in his left upper extremity and back. A July 8, 1999 radiology report reflecting degenerative changes in the cervical spine; and a March 9, 2003 attending physician's report from Dr. Edward J. Nebel, a Board-certified orthopedic surgeon, diagnosing lumbar strain and L5 degenerative disc disease and left and right knee prepatellar contusions. Dr. Nebel stated that the history of injury was a February 22, 1993 automobile accident.

Appellant submitted several witness statements in support of his claim. On February 10, 2005 Doug Johnson indicated that appellant complained of neck problems as a result of his job requirements. On February 3, 2005 Marc Marsiglia, a senior case technician, stated that appellant had informed him that he had difficulty performing certain tasks, including typing, talking on the telephone and handling files, because they aggravated his neck, hand and shoulder pain. On February 2, 2005 Don Frayer, who formerly held appellant's position, stated that he was aware that appellant had a neck condition resulting from an automobile accident and opined that the duties of appellant's job "would very much aggravate his condition." In a January 3, 2005 statement, William J. King, an administrative law judge, indicated that he had no first-hand knowledge as to appellant's condition or any role that his work might have played in exacerbating his symptoms, but that appellant had told him that his work activities had aggravated his condition. In a January 31, 2005 statement, Evelyn Eister, lead case technician, noted that appellant had been placed in a permanent scheduling position, which required continuous handling of files and, therefore, aggravated his condition. She further indicated that appellant had told her on numerous occasions that he experienced pain in his neck, shoulders and hands that was exacerbated by answering telephones in the office.

Appellant submitted: a November 6, 2004 report of an MRI scan reflecting degenerative changes of the cervical spine at C4-5, C5-6 and C6-7 levels; a January 15, 2005 radiology report from a Dr. Robert B. Hills; and physical therapy progress notes from October 4, 2004 through January 31, 2005.

By letter dated March 3, 2005, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to how his claimed conditions were causally related to his federal employment.

In a March 3, 2005 report, Dr. Dean J. Toriello, a Board-certified plastic surgeon, stated that appellant had "obvious diffuse swelling in [his] left hand with mild diffuse arthritic changes." Indicating that he had not reviewed appellant's job description, medical records or therapy notes, Dr. Toriello provided impressions of diffuse swelling and limited motion in the left hand; stenosing tenosynovitis, multiple digits, left hand; possible connective tissue disorder; and rheumatoid arthritis. In a March 18, 2005 letter, William Brinkmeier, a physician's assistant, indicated that appellant's underlying osteoarthritic condition, including pain, swelling and decreased range of motion, was exacerbated by the use of his hands at his current employment.

Appellant submitted a note dated April 18, 2005 signed by Supervisor Mary Austin, who stated that on January 17, 2005 appellant was informed that there were no jobs available that met his doctor's restrictions, which precluded fine manipulation of the hands for two weeks. Accordingly, appellant went home.

In a letter dated May 3, 2005, Dr. Patricia Seiter, a treating physician, stated that appellant's repetitive work duties, including unfolding of incoming mail, stamping of mail, typing, opening boxes and numerous invoices on a daily basis, could exacerbate or cause the pain, swelling and osteoarthritis in his hands. She opined that "these work duties have contributed to his current condition and have led to his inability to return to work."

By decision dated May 10, 2005, the Office denied appellant's claim, finding that he had failed to submit sufficient medical evidence to establish a causal relationship between his condition and factors of employment.

Appellant submitted an April 25, 2005 report of a nerve conduction study and an April 25, 2005 report from Dr. Brian P. Giersch, a Board-certified physiatrist, who provided impressions of cervicgia and bilateral upper extremity pain and subjective swelling with equivocal electrodiagnostic testing, and stated that the testing "certainly could be consistent with possible mild neuropathy at the wrist on the left," but that it was not consistent with cervical radiculopathy or brachial plexopathy. He noted appellant's claims that his job-related requirement of lifting heavy files on a repetitive basis had exacerbated his neck condition and that his pain had spread to his left shoulder. Dr. Giersch provided no opinion on the cause of appellant's condition.

On June 7, 2005 appellant filed a request for review of the written record. In support of his request, he submitted three documents: a previously provided May 3, 2005 letter from Dr. Seiter; an undated memorandum to Mary Austin of the employing establishment describing appellant's duties as a case technician; and a July 15, 2005 statement from Ms. Austin, who indicated that, as of approximately October 2004, she noticed that appellant had consistent difficulty using his hands and appeared noticeably stiff and uncomfortable.

By decision dated October 6, 2005, an Office hearing representative affirmed the May 10, 2005 decision, finding that appellant had failed to provide a rationalized medical opinion establishing a causal relationship between his diagnosed condition and factors of employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including the fact that an injury was

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged,<sup>2</sup> 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>5</sup>

Medical conclusions unsupported by rationale are of little probative value.<sup>6</sup> An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has failed to submit any medical report containing a rationalized, probative opinion which relates his claimed upper extremity condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

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<sup>2</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>6</sup> *Willa M. Frazier*, 55 ECAB \_\_\_ (Docket No. 04-120, issued March 11, 2004).

<sup>7</sup> *John D. Jackson*, 55 ECAB \_\_\_ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

Appellant submitted medical reports, physical therapy notes and accident reports relating to a February 22, 1993 motor vehicle accident. These reports, dating from 1993 to 1996, do not provide an opinion relating appellant's current condition to employment factors. On the contrary, Dr. Baty stated that, although he was unable to determine the cause of appellant's left upper extremity weakness and back pain, he suspected it was due to an underlying degenerative disease. Dr. Stand's March 29, 2003 report reflected that appellant's cervical neck strain resulted from the February 22, 1993 motor vehicle accident.

Appellant also submitted unsigned physicians' notes dated May 26, 1999 reflecting a nonwork-related back injury on May 25, 1999. The Board has consistently held that unsigned treatment notes lack probative value.<sup>8</sup> Moreover, the notes offer no explanation as to a causal relationship between appellant's current condition and alleged employment factors.

The medical evidence of record also fails to establish how the implicated employment factors caused appellant's diagnosed condition. Appellant submitted a March 18, 2005 letter signed by William Brinkmeier, a physician's assistant. He also submitted notes from registered nurses, including a November 18, 2004 note from Staff Nurse Leslie Briggs and a January 19, 2005 medical certificate signed by Nancy Wasson, R.N. In that physicians' assistants and nurses do not qualify as "physicians" under the Act, these reports are of no probative value.<sup>9</sup> Appellant submitted reports bearing illegible signatures dated January 17, 25 and 27, 2005 reflecting treatment for work-related bilateral hand pain and stiffness and restricting appellant from fine manipulation or gripping with both hands for four weeks. However, as these reports lack legible signatures and cannot be properly identified, they do not constitute probative medical evidence.<sup>10</sup>

Dr. Giersch's April 25, 2005 report provided impressions of cervicgia and bilateral upper extremity pain and subjective swelling. He stated that the testing "certainly could be consistent with possible mild neuropathy at the wrist on the left." However, he did not offer a definitive opinion as to the cause of appellant's condition. Similarly, in his March 3, 2005 report, Dr. Toriello provided impressions of diffuse swelling and limited motion in the left hand; stenosing tenosynovitis, multiple digits, left hand; possible connective tissue disorder; and rheumatoid arthritis. He did not provide an opinion connecting appellant's condition to factors of employment. The Board has repeatedly held that a diagnosis without explanation is of limited probative value.<sup>11</sup> Moreover, Dr. Toriello indicated that he had not reviewed appellant's job description, therapy notes or medical record.

In a May 3, 2005 report, Dr. Seiter opined that appellant's repetitive duties could have exacerbated or caused the pain, swelling and osteoarthritis in his hands and had contributed to his current condition. The Board finds that his opinion lacks probative value in that it is vague and

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<sup>8</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>9</sup> Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

<sup>10</sup> *Vickie C. Randall*, 51 ECAB 357 (2000).

<sup>11</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

equivocal, and fails to fully explain the causal relationship between appellant's condition and factors of employment. Moreover, his opinion was not based on an examination of appellant or a full review of his medical history.

Appellant expressed his belief that his condition resulted from repetitive work activities. The Board has held that 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.<sup>12</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, appellant has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

### CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that his claimed condition was sustained in the performance of duty.

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<sup>12</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 6 and May 10, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 1, 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