



In a letter dated July 1, 2005, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that appellant submit a physician's reasoned opinion addressing the causal relationship of her claimed condition and specific employment factors. In a letter of the same date, the Office requested information from the employing establishment regarding appellant's employment duties.

Appellant came under the treatment of Dr. James V. Ortman, a Board-certified internist, who noted in a report dated June 22, 2005, that appellant presented with low back pain and pain in the left L5 distribution. Appellant reported that her pain commenced at work and was aggravated by her work duties. However, Dr. Ortman noted that the details of the onset "seem a bit murky." He found decreased range of motion in the low back. In an undated report, Dr. Ortman advised that appellant had multiple physical complaints, including bilateral shoulder pain, chronic low back pain, L5 radiculopathy and impingement of the foramen on the left. Appellant reported that the conditions commenced at work and therefore she believed they were work related. Dr. Ortman advised that these conditions make it difficult for appellant to perform her job and recommended one month of leave. Appellant submitted a statement dated July 22, 2005, which advised that her job duties required lifting, pushing and pulling of pots and pans during an 8- to 12-hour shift, which aggravated her shoulder, hands, back and knees. She noted that her symptoms began in July 2001. Appellant attached a work flow sheet and a job description. A magnetic resonance imaging (MRI) scan of the lumbar spine dated July 21, 2006 revealed a small left foraminal focal disc protrusion at L5-S1 with an associated small radial tear, mild central canal stenosis at L4-5 and mild to moderate bilateral neural foraminal narrowing at L4-5.

In a August 4, 2005 statement, Vicki M. Carville, appellant's supervisor, noted that appellant had difficulty lifting heavy scrub mops, pushing the floor scrubber and experienced numbness in her hands when performing duties requiring fine motor skills. She advised that there were no special precautions taken outside of appellant not being required to push the floor scrubber.

In a decision dated August 11, 2005, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her conditions were caused by her employment duties.

In a letter received September 15, 2005, appellant requested reconsideration. She submitted an x-ray of the right and left knees dated February 6, 1999. It revealed moderately severe degenerative changes of the medial compartment of the right knee and degenerative changes of the medial joint space with a small amount of joint fluid on the left knee. An MRI scan of upper extremity joints dated August 10, 2004 revealed a large complete rotator cuff tear centered on the supraspinatus, cysts of the humeral head and glenoid anteriorly and moderate acromioclavicular arthropathy. Other reports from Dr. Ortman dated May 17, 2005, advised that appellant had severe osteoarthritis involving both knees, shoulders and a rotator cuff tear of the right. He noted that appellant experienced difficulty pushing and pulling an electric floor scrubber; however, she was able to push and pull a food car, walk and grasp food trays, work six hours per day, reach above her shoulders and perform fine manipulation. On October 19, 2005 Dr. Ortman advised that appellant had generalized osteoarthritis involving both knees, shoulders and back with a documented rotator cuff tear in the right shoulder. He noted that appellant had

various emergency room visits over the years with work-related injuries to the left knee, right shoulder and low back and opined that “there could certainly be some contribution to her disability from those injuries. Also submitted were physical therapy notes from August 1 to 17, 2005.

On October 12, 2005 Ms. Carville indicated that appellant was a part-time employee working three-hour shifts. However, she occasionally worked an eight-hour shift prior to November 30, 2003. She advised that appellant mentioned that her knee hurt but never indicated that her work duties were aggravating her injuries.

By a decision dated November 7, 2003, the Office denied modification of the August 11, 2005 decision, finding that the medical evidence was insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or his 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>1</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 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>2</sup>

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<sup>1</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>2</sup> Solomon Polen, 51 ECAB 341 (2000).

## ANALYSIS

It is not disputed that appellant's duties as a food service worker included lifting and pushing and performing repetitive activities using her arms. However, she has not submitted sufficient medical evidence to support that in her bilateral shoulder, knee, back and hand conditions are causally related to the employment factors or conditions. On July 1, 2005 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated the claimed conditions.

Appellant submitted a report from Dr. Ortman dated June 22, 2005. He noted that appellant presented with low back pain in the left L5 distribution. Appellant reported that her pain commenced at work and believed it was aggravated by her work duties. However, Dr. Ortman merely noted the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related.<sup>3</sup> Dr. Ortman noted that the history obtained seemed a bit murky. He did not provide a rationalized opinion regarding the causal relationship between appellant's conditions and specific factors of her employment.<sup>4</sup> His opinion is vague and speculative on the issue as Dr. Ortman expressed uncertainty regarding the cause of appellant's condition, indicating that the details of the onset "seem a bit murky."

In an undated report from Dr. Ortman, he advised that appellant had multiple physical conditions and complaints, advising that the reported conditions commenced at work and therefore would be work related. However, as noted he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's conditions were work related.<sup>5</sup> On October 19, 2005 Dr. Ortman advised that appellant had generalized osteoarthritis involving both knees, shoulders and back with a documented rotator cuff tear in the right shoulder. However, he did not address how specific employment factors caused or contributed to the diagnosed conditions.<sup>6</sup> Dr. Ortman noted that appellant had various emergency room visits over the years pertaining to work-related injuries to the left knee, right shoulder and low back. He opined that "there could certainly be some contribution to her disability from those injuries." Although Dr. Ortman noted that appellant's condition "could be" work related, he couched his opinion in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>7</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

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<sup>3</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>4</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>5</sup> *Frank Luis Rembisz*, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Also submitted were physical therapy notes from August 1 to 17, 2005. However, the Board has held that physical therapy notes are not considered medical evidence as a physical therapist is not a physician under the Act.<sup>8</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including an MRI scan of the joint upper extremities dated August 10, 2004, an MRI scan of the lumbar spine dated July 21, 2006 and an x-ray of the right and left knees dated February 6, 1999, fail to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions of osteoarthritis involving both knees, shoulders and back with a documented rotator cuff tear in the right shoulder. For this reason, this evidence is not sufficient 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>9</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>10</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.

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<sup>8</sup> See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>9</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> On appeal, appellant submitted a December 9, 2005 report from Dr. Ortman. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7 and August 11, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 11, 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