

and strain of the neck, unspecified other soft tissue injuries of the neck and myalgia and myositis.¹ On January 9, 2006 appellant asked the Office to accept a disc protrusion at C3-4 as causally related to his February 4, 2005 employment injury.

In August 12 and October 20, 2005 magnetic resonance imaging (MRI) scans of appellant's cervical spine, Dr. Mark C. Lopiano, a radiologist, stated that he had a small focal disc protrusion at C3-4.

In a report dated September 6, 2005, Dr. Robert G. Squillante, an orthopedist, stated that appellant's cervical MRI scan revealed a right-sided herniated disc at C3-4. He did not believe that this disc problem was causing any of appellant's upper extremity symptoms but might cause neck pain. Dr. Squillante provided findings on physical examination which included reduced cervical range of motion and some tenderness in the thoracic spine. However, appellant was neurologically intact.

On December 21, 2005 Dr. Lee Berlad, a neurosurgeon, stated that appellant had muscle spasms with knots in his neck. He opined that appellant had a herniated disc at C3-4 that could explain some of his neck pain.

By decision dated January 19, 2006, the Office denied appellant's claim for a disc protrusion at C3-4.

In a January 19, 2006 report, Dr. Kostas J. Constantine, an attending orthopedic surgeon, stated that he treated appellant for bilateral carpal tunnel syndrome and cubital tunnel syndrome. He stated, "most likely," appellant's disc protrusion at C3-4 was causally related to his February 2, 2005 employment injury. On July 6, 2006 Dr. Constantine stated that appellant had no prior injuries or conditions before his February 2005 employment injury that could be considered a contributing cause of his C3-4 herniated disc. He stated:

"From my experience, it is not unusual for a cervical strain and disc herniation to be caused by the constant strain of repetitive activities performed in a nonergonomic setting....

"Therefore, it is my medical opinion rendered within a reasonable degree of medical certainty that [appellant's] C3-4 disc herniation was a direct result of the job activities he performed as a management analyst with the [employing establishment] while working on a special project which involved a significant amount of repetitive activity in a nonergonomic setting.... This job consisted of six to seven hours of data entry per day ... at a workstation where [appellant] had to continually turn his head to the right to look at a monitor that was off to the side and use a keyboard that was on a desk that was higher than usual. Also, the chair and keyboard were not ergonomically designed."

¹ Appellant has a separate claim accepted for a September 1, 2003 aggravation of displacement of a lumbar intervertebral disc without myelopathy and a November 10, 2004 injury accepted for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

In reports dated January 27 and April 26, 2006, Dr. Stephanie A. Giorlando, a physiatrist, stated that appellant had a history of performing intensive data entry work at a computer where the setup was nonergonomic in that the keyboard was on one table and the monitor was on a table perpendicular to the keyboard. She provided findings on physical examination. Dr. Giorlando's diagnoses included chronic cervicothoracic strain with marked soft tissue tightness in a setting of a C3-4 disc protrusion.

On February 17, 2006 Dr. Michael E. Goldsmith, an orthopedic surgeon, stated that appellant had used computer equipment during his 17-year employment. The equipment was not ergonomically designed because he had to continually turn his head to look at a computer monitor that was not in front of him. Dr. Goldsmith stated:

“[T]he clinical evaluation showed that [appellant] has lumbar L5-S1 degenerative disc disease [and] cervical C3-4 disc herniation. These findings have been demonstrated by MRI scan. The cervical disc herniation correlates to the side and location of the pain. The etiology of both these diagnoses are often congenital, but may be aggravated by environmental factors such as [appellant's] work environment. Environments which involve heavy lifting, twisting, sitting in [in]adequate chairs for long periods or bending often exacerbate degenerative disc disease and result in disc herniation. Therefore, in my medical opinion[,] [appellant's] symptoms and diagnosis were aggravated by his work environment.”

Appellant requested a telephonic hearing that was held on May 31, 2006. By decision dated August 4, 2006, an Office hearing representative set aside the January 19, 2006 decision and remanded the case for further development of the medical evidence.

On February 15, 2007 the Office referred appellant, together with a statement of accepted facts and copies of medical reports, to Dr. Robert A. Smith, a Board-certified orthopedic surgeon and an Office referral physician, for an evaluation as to whether he had a disc protrusion or herniation causally related to his February 4, 2005 employment injury.

In a report dated March 8, 2007, Dr. Smith reviewed a history of appellant's condition and provided findings on physical examination. He noted that an MRI scan in 2005 revealed a small right-sided C3-4 disc osteophyte complex. Dr. Smith stated:

“With regard to the accepted conditions of soft tissue sprain/strain of the neck, the clinical examination at this time is essentially normal in that regard and I would conclude that [appellant] has long since reached maximum medical improvement and recovered from the sprain/strain of the neck that was sustained sometime around February 4, 2005. With regard to his complaints of diffuse myalgia, myocytisi and soft tissue disorder, there does not appear to be any evidence of abnormal soft tissue findings on the examination at this time and I would conclude that those conditions have also resolved.

“The finding of the right paracentral disc protrusion at C3-4 ... [is] unrelated to the work incident in question. I had the opportunity to review the cervical film from October 20, 2005 and the C3-4 disc abnormality is extremely small and

appears to be chronic in nature and according to the record has not changed over time, indicating [that] there was no aggravation of this finding from work activities. The neurological examination, as well as [an] EMG study[,] show no evidence of any radiculopathy from the neck, indicating that the C3-4 finding is not clinically significant.

“Therefore, with regard to the accepted condition[s], I would conclude that [appellant] is at maximum medical improvement and certainly could return to his preinjury job as long as he has an ergonomic situation. It [is] unlikely that he would require any further treatment related to the incident of February 4, 2005....”

By decision dated March 29, 2007, the Office denied appellant’s claim that his C3-4 disc condition was causally related to his February 4, 2005 employment injury on the grounds that the weight of the medical evidence was represented by the report of Dr. Smith.

LEGAL PRECEDENT

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, generally, is rationalized medical evidence.² 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 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.³

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that his C3-4 disc condition is causally related to his February 4, 2005 employment injury.

Regarding the diagnosis of appellant’s condition, the Board notes initially that the MRI scan reported a disc protrusion at C3-4, not a disc herniation. Most of the physicians of record offered a diagnosis of disc herniation, but offered no explanation as to how this diagnosis was

² *Michael S. Mina*, 57 ECAB ____ (Docket No. 05-1763, issued February 7, 2006).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

made, given the MRI scan report of protrusion, not herniation. Dr. Squillante stated that a cervical MRI scan revealed a herniated disc at C3-4. However, even if his diagnosis was supported by the diagnostic testing, he did not explain how appellant's disc problem at C3-4 was causally related to his accepted conditions from his February 4, 2005 employment injury, a sprain and strain of his neck, unspecified other soft tissue injuries of the neck and myalgia and myositis. For these reasons, Dr. Squillante's report is of diminished probative value and is not sufficient to establish that appellant sustained a disc problem at C3-4 causally related to his employment.

Dr. Berlad stated that appellant had a herniated disc at C3-4 that could be causing neck pain. In addition to offering this unexplained diagnosis, his explanation as to how appellant's disc problem at C3-4 was causally related to his employment. For these reasons, Dr. Berlad's report is of diminished probative value and is not sufficient to establish that his disc problem at C3-4 causally related to his employment.

Dr. Constantine stated that, "most likely," appellant's disc protrusion at C3-4 was causally related to his February 2, 2005 employment injury. In a second report, he changed his diagnosis to a disc herniation. Dr. Constantine opined that the disc herniation was a direct result of appellant's job activities which included turning his head to look at a monitor that was off to the side and using a keyboard that was too high. His second diagnosis of a herniated disc is not explained. Therefore, Dr. Constantine's report is of diminished probative value. Even if he had provided an accurate diagnosis, his opinion regarding causal relationship is speculative in that he opined that appellant's disc condition at C3-4 was "most likely" caused by his employment activities. Due to these deficiencies, Dr. Constantine's report is not sufficient to establish that appellant had a disc problem at C3-4 causally related to factors of his employment.

Dr. Goldsmith stated that appellant's computer equipment was not ergonomically designed and that he had to continually turn his head to look at a computer monitor that was not in front of him. He diagnosed a C3-4 disc herniation which could be caused or aggravated by environmental factors such as heavy lifting, twisting, sitting in inadequate chairs for long periods or bending. However, Dr. Goldsmith's diagnosis of a herniated disc is contrary to the MRI scan finding of a disc protrusion. Due to the unexplained diagnosis, his report is of diminished probative value. Even if Dr. Goldsmith had provided an accurate diagnosis, he provided insufficient medical rationale in support of his opinion regarding causal relationship. Therefore, his report is not sufficient to establish that appellant sustained a disc problem at C3-4 that was caused or aggravated by his employment.

Dr. Giorlando stated that appellant had a history of performing intensive data entry work at a computer station where the keyboard was on one table and the monitor on a table situated perpendicular to the keyboard. Her diagnoses included a C3-4 disc protrusion. However, Dr. Giorlando did not opine that appellant's disc protrusion was related to his employment. She did not provide medical rationale explaining how the disc protrusion was causally related to his job activities. Therefore, this report is insufficient to establish that appellant sustained a disc protrusion at C3-4 that was caused or aggravated by his employment.

Dr. Smith reviewed a history of appellant's condition and provided findings on physical examination. He stated that the MRI scan findings of a disc protrusion at C3-4 was unrelated to

the February 4, 2005 employment injury. Dr. Smith noted that the C3-4 disc abnormality was extremely small and appeared to be chronic in nature and had not changed over time, indicating that there was no aggravation from work activities. Because he found that appellant's disc protrusion at C3-4 was not causally related to his employment, this report does not discharge appellant's burden of proof to establish a work-related cervical disc condition.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that his C3-4 disc condition is causally related to his February 4, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2007 is affirmed.

Issued: December 11, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board