



employment activities. She stated that she first realized that her condition was related to her employment on March 9, 2006.<sup>1</sup>

Appellant submitted an April 24, 2006 work form excuse from Dr. Steven C. Thomas, a treating physician. She provided work excuses and return-to-work releases from Dr. Steven C. Thomas, a treating physician, for the period April 14 through May 19, 2006. On April 14, 2006 Dr. Michael Thomas indicated that appellant could return to light duty 10 hours per week with restrictions on stooping, bending, climbing, reaching, twisting, kneeling and crouching. On May 19, 2006 he increased appellant's hours to eight hours per day, four days per week. The record also contains work excuses from Dr. John Sager, Board-certified in the field of family medicine, for the period February through May 8, 2006. On February 23, 2006 Dr. Sager requested that appellant be excused from work "due to illness." On March 5, 2006 he indicated that appellant should be excused from work due to a "medical condition" and should be restricted from heavy lifting or bending until March 22, 2006. On March 10, 2006 Dr. Sager placed appellant "off work" due to "injury and medical condition" until March 13, 2006. On May 8, 2006 he stated that appellant was unable to work due to a medical condition.

Appellant submitted a position description for a mail processing clerk. Duties included loading, sweeping and casing. The description provided that the employee must be able to unload trays of mail weighing up to 20 pounds from containers weighing up to 800 pounds; process mail continuously through a feeder (one tray per minute); sweep mail into cardboard trays and dispatch trays from a machine to a container; and pull containers when full. Duties involved handling heavy sacks of letter mail or parcel post weighing up to 70 pounds.

On April 3, 2006 appellant requested a light-duty assignment "due to her current condition." On April 28, 2006 she accepted a light-duty position as a modified mail processing clerk. Appellant was not required to lift or carry more than 15 pounds or to twist, reach, stoop, bend or push more than five percent of her workday.

An undated injuries and illnesses incident report (OSHA Form 301) reflected that on March 9, 2006 appellant was "injured" on March 6, 2009.

By letter dated February 13, 2007, the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit a detailed description of the employment activities alleged to have caused her back condition, as well as a rationalized medical report from her physician, providing a diagnosis, history of treatment and an opinion with medical reasons as to how her diagnosed condition was causally related to employment activities.

Appellant submitted a December 13, 2006 report from Dr. Thomas J. Purtzer, a Board-certified neurological surgeon, who stated that he had been treating her for pain in her lower back, neck and arms since June 2006. Noting appellant's report that she strained her back in March 2006, Dr. Purtzer indicated that her lower back and neck pain had essentially resolved. He diagnosed chronic pain syndrome and right arm pain of undetermined etiology.

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<sup>1</sup> The Office's December 29, 2008 decision notes that appellant had filed previous claims for her neck and shoulders, File Nos. xxxxxx337 and xxxxxx628.

By decision dated March 22, 2007, the Office denied appellant's claim on the grounds that appellant had failed to establish the fact of injury. It found that there was no evidence of record to establish what specific work events were responsible for the alleged back injury. Further, the Office found that there was no medical evidence which provided a diagnosis which could be connected to the claimed events.

In a May 15, 2006 report, Dr. Michael Thomas diagnosed strained thoracic and lumbar spine. He indicated that the diagnosed condition commenced on March 9, 2006 and that appellant would have residuals for approximately three to four months.

In a September 10, 2006 attending physician's report, Dr. Michael Thomas diagnosed lumbar spine, sacroiliac joint and thoracic spine strains, with associated somatic dysfunction. He identified the date of injury as March 9, 2006. Dr. Michael Thomas provided a history of injury, which included "repeated lifting at work." He opined that appellant's condition was caused or aggravated by employment activities by placing a checkmark in the "yes" box and providing the notation, "repeated heavy lifting."

On January 5, 2008 appellant requested an oral hearing.<sup>2</sup> In a decision dated March 11, 2008, the Office hearing representative denied appellant's request for an oral hearing as untimely, noting that the request had been made more than 30 days after the issuance of the Office's March 22, 2007 decision. The hearing representative also stated that appellant's claim could be equally well addressed by submitting a request for reconsideration.

On February 28, 2008 appellant requested reconsideration. By decision dated March 13, 2008, the Office denied modification of its March 22, 2007 decision. It found that, as appellant had failed to identify any employment factors contributing to her alleged back condition, she had failed to establish the fact of injury. The Office also noted an inconsistency between the date of injury identified by Dr. Michael Thomas namely March 9, 2006 and appellant's lack of precision in identifying the cause of injury.

On October 23, 2008 appellant requested reconsideration. She stated that she had been "doing a lot of repetitive manual labor at work, including pushing up to 1,500-pound cages and repetitively lifting up to 55 pounds while working 12-hour shifts, 6 days per week. Appellant also explained that she did not file a claim until January 9, 2007 because she was hoping to secure another position at the employing establishment and did not want to tarnish her reputation.

Appellant submitted additional reports from Dr. Michael Thomas, for the period April 19 through September 10, 2006, in which he reiterated his diagnoses. She also provided reports for the period March 10 through May 26, 2006 from Dr. Sager. On March 10, 2006 Dr. Sager stated that appellant's lower back pain began on March 9, 2006 after she rose from a toilet. He indicated that the pain radiated from the low back to the mid thorax region and was exacerbated by employment activities. On May 4, 2006 Dr. Sager diagnosed "ongoing muscle strain related

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<sup>2</sup> Appellant indicated that she had not received notice of a hearing which was scheduled in File No. xxxxxx337. The record contains a copy of an October 23, 2007 decision in File No. xxxxxx337 finding that appellant abandoned a hearing in that case, which had been scheduled for September 25, 2007.

to work, overuse syndrome also related to work in both the upper and lower back areas.” In a report dated May 26, 2006, he indicated that appellant’s position required her to do heavy lifting and carrying, “which is a significant problem.” Dr. Sager diagnosed lower back pain with right-sided radiculopathy.

In a March 22, 2006 report, Dr. Thomas Ewald, a treating physician, diagnosed lower back pain and lower back degenerative disc disease, superimposed on pelvic malalignment, as evidenced by a 2004 magnetic resonance imaging (MRI) scan. He indicated that appellant had an onset of lower back pain on approximately March 9, 2006 after a night of her usual employment activities, which required heavy lifting.

Appellant submitted physical therapy notes and reports for the period March 16 through May 4, 2006. On March 16, 2006 Lee Gillock, a physical therapist, stated that appellant woke up with severe back pain on March 9, 2006 after working a 12-hour shift the night before. The record contains a March 15, 2006 report of an MRI scan of the lumbar spine.

The record contains a letter dated December 11, 2008 from Randall Sparks of the employing establishment. Mr. Sparks stated that appellant “accurately describes her work, we frequently lift letter trays, for sometimes very long hours.”

By decision dated December 29, 2008, the Office denied modification of its previous decisions. It found that the evidence did not establish that appellant had sustained a work-related back injury on March 9, 2006 and that the medical evidence did not include a discussion of specific work activities which caused appellant’s condition or aggravated her underlying back condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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.<sup>4</sup> 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>5</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 employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 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>6</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>7</sup> However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>8</sup>

Appellant filed an occupational disease claim alleging injuries to her lower and upper back, which she first realized was related to her employment activities on March 9, 2006. Although she identified March 9, 2006 as the date of injury, she consistently indicated that she first experienced pain on that date. The record does not contain any reference on her part to a traumatic injury on March 9, 2006.<sup>9</sup> Appellant reported that she had been “doing a lot of repetitive manual labor at work, including pushing up to 1,500-pound cages and repetitively lifting up to 55 pounds while working 12-hour shifts, six days per week. She provided a position description for mail processing clerk, which required the ability to unload or load trays of mail weighing up to 20 pounds from containers weighing up to 800 pounds; to process mail continuously through a feeder (one tray per minute); to sweep mail into cardboard trays and dispatch trays from a machine to a container; to pull the containers when full; and to handle heavy sacks of letter mail or parcel post weighing up to 70 pounds. The employing establishment acknowledged that appellant accurately described her work. The Board finds that

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

<sup>7</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>8</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 7; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

<sup>9</sup> See 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. § 10.5(q) and (ee) (2009) (“Occupational disease or Illness” and “Traumatic injury” defined).

appellant has identified employment factors alleged to have caused or contributed to her claimed back condition.

The Office found that appellant's failure to report her March 9, 2006 injury until January 9, 2007 cast doubt on the validity of her claim. However, this is an occupational disease claim for an injury resulting from events or incidents occurring over a period of time, rather than a claim for traumatic injury for an event which occurred on one day or over one shift. Appellant did not allege that she sustained an injury on March 9, 2006, but rather that she began experiencing pain on that date. It was reasonable that she would file a claim for a condition allegedly resulting from ongoing employing activities several months after the onset of pain. Moreover, appellant provided an explanation as to why she waited to file her claim.

Reports from appellant's treating physician, Dr. Michael Thomas, support appellant's occupational disease claim. On May 15, 2006 he diagnosed strained thoracic and lumbar spine, noting that the diagnosed condition commenced on March 9, 2006. On September 16, 2006 Dr. Michael Thomas diagnosed lumbar spine, sacroiliac joint and thoracic spine strains, with associated somatic dysfunction provided a history of injury, which included "repeated lifting at work." He opined that appellant's condition was caused or aggravated by employment activities by placing a checkmark in the "yes" box and providing the notation, "repeated heavy lifting." The Board notes that an opinion on causal relationship which is indicated by the placement of a checkmark is usually found to be of diminished probative value. However, Dr. Michael Thomas supported his opinion with comments reflecting that the cause of appellant's condition was repeated heavy lifting. His numerous reports of record document that appellant experienced and was treated for upper and lower back pain commencing March 9, 2006, which she attributed to her repetitive heavy lifting activities at work.

Other medical evidence of record supports appellant's claim. Both Dr. Sager and Dr. Ewald discussed appellant's work activities, which they opined caused or contributed to her diagnosed back condition. On March 10, 2006 Dr. Sager stated that appellant's lower back pain, which began on March 9, 2006, radiated from the low back to the mid thorax region and was exacerbated by employment activities. On May 4, 2006 he diagnosed "ongoing muscle strain related to work, overuse syndrome also related to work in both the upper and lower back areas." On May 26, 2006 Dr. Sager indicated that appellant's position required her to do heavy lifting and carrying, which he described as a significant problem." He diagnosed lower back pain with right-sided radiculopathy. On March 22, 2006 Dr. Ewald diagnosed lower back pain and lower back degenerative disc disease, superimposed on pelvic malalignment, as evidenced by a 2004 MRI scan. He indicated that appellant had an onset of lower back pain on approximately March 9, 2006 after a night of her usual employment activities, which required heavy lifting. The Office found that appellant's physicians did not discuss her specific work activities that caused or aggravated her back condition. The physicians, however, while not discussing in detail the exact functions of her position, identified the substantive perceived cause of appellant's back condition, repetitive heavy lifting.

The Board notes that, while none of the medical reports submitted by appellant is completely rationalized, they are consistent in indicating that she sustained a back condition that was caused or aggravated by conditions of her employment. Moreover, they are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to

meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her diagnosed condition and the claimed employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>10</sup> Therefore, the Office decision will be set aside and the case will be remanded for further development.

On remand the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position, and the restrictions imposed by appellant's treating physicians. It should submit a statement of accepted facts to appellant's treating physician, or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

### **CONCLUSION**

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.<sup>11</sup>

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<sup>10</sup> See *Virginia Richard*, *supra* note 7; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> In light of the Board's ruling on the first issue, the second issue is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision.

Issued: October 5, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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