



## **FACTUAL HISTORY**

On May 15, 2008 appellant, then a 24-year-old food service worker, filed a traumatic injury claim alleging that on May 14, 2008 she experienced pain in her lower back and buttocks as a result of slipping on water.<sup>1</sup> She stopped work on May 16, 2008.

By letter dated June 18, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested medical evidence, including a rationalized medical report from an attending physician which described a history of injury, dates and results of examination and tests, diagnosis, treatment provided, and opinion with medical reasons establishing that the diagnosed condition was caused or aggravated by the May 14, 2008 incident. Appellant was afforded 30 days to submit the requested evidence.

An unsigned hospital report dated May 16, 2008 stated that appellant's back pain was most likely caused by a strain of the muscles or ligaments that support the spine. In a May 16, 2008 disability certificate, a physician whose signature is illegible stated that appellant was disabled from work as of that date.

In form reports dated May 19 and July 3, 2008, Dr. Stephen C. Sirota, an attending Board-certified physiatrist, reviewed a history that appellant slipped on a wet floor at work on May 19, 2008. He diagnosed degenerative disc disease of the lumbar spine. Dr. Sirota indicated with an affirmative mark that the diagnosed condition was caused by an employment activity. In a May 19, 2008 narrative report, he reported findings on physical examination which included decreased range of motion and pain in the back. Regarding the lower extremities, Dr. Sirota reported 5/5 strength, intact sensation and deep tendon of 2/2. An x-ray of the lumbosacral spine demonstrated disc space narrowing at L5-S1. No fracture or dislocation was identified. Dr. Sirota diagnosed possible lumbosacral herniated disc and radiculitis/radiculopathy. He stated that appellant would start a physical therapy program for her new work-related injury which occurred on May 15, 2008. In a June 2, 2008 report, Dr. Sirota provided essentially the same findings as in his May 19, 2008 report. He ruled out lumbosacral herniated disc and radiculitis/radiculopathy.

By decision dated July 23, 2008, the Office denied appellant's claim. It found the evidence insufficient to establish that the claimed injury was causally related to factors of her employment. On August 15, 2008 appellant requested a review of the written record by an Office hearing representative.

In reports dated August 4, September 8 and October 27, 2008, Dr. Sirota reiterated his prior diagnosis of lumbosacral degenerative disc disease. In the August 4, 2008 report, he opined that appellant's condition had significantly worsened and that it was caused by a May 15, 2008 work incident. In disability certificates dated August 4 and September 8, 2008, Dr. Sirota stated that appellant was totally disabled until October 6, 2008.

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<sup>1</sup> Prior to the instant claim, the Office accepted appellant's claims for a right hand sprain sustained on July 25, 2005, a left shoulder contusion sustained on March 21, 2007 and a lumbosacral sprain sustained on July 20, 2007; Office File No. xxxxxx021.

By decision dated November 17, 2008, an Office hearing representative affirmed the July 23, 2008 decision. She found the evidence sufficient to establish that the May 14, 2008 incident occurred at the time, place and in the manner alleged; however, the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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 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 a causal relationship is 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>5</sup> Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

## ANALYSIS

The Office accepted that appellant slipped on water on May 14, 2008 while working as a food service worker at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed lumbosacral degenerative disc disease was caused or aggravated by the May 14, 2008 employment incident.

The unsigned May 16, 2008 hospital report stating that appellant's back pain was most likely caused by a strain of the muscles or ligaments that support the spine and May 16, 2008 disability certificate of the physician whose signature is illegible indicating that appellant was totally disabled from work commencing on that date are insufficient to establish appellant's claim. It is unclear from the signature on the disability certificate whether the examiner was a physician. The Board has previously held that reports submitted that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence, in that they lack proper identification.<sup>7</sup>

Dr. Sirota's May 19 and July 3, 2008 form reports indicated with an affirmative mark that appellant's degenerative disc disease of the lumbar spine was caused or aggravated by a May 19, 2008 work incident. Reports which only address causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury, is insufficient to establish causal relationship and is of diminished probative value.<sup>8</sup> Dr. Sirota did not explain how the diagnosed condition was caused or contributed to by the accepted May 14, 2008 employment incident. Further, the Board notes that, in his July 3, 2008 report, he incorrectly stated that the accepted employment incident occurred on May 19, 2008 rather than on May 14, 2008. The Board finds that Dr. Sirota's reports are insufficient to establish that appellant sustained a back injury causally related to the accepted employment incident.

Similarly, Dr. Sirota's September 8, 2008 report which found that the worsening of appellant's lumbosacral degenerative disc disease was causally related to a May 15, 2008 work incident is insufficient to establish appellant's claim. This evidence failed to explain how the diagnosed condition was caused or contributed to by the accepted May 14, 2008 employment incident. Further, Dr. Sirota again provided an incorrect date on which the accepted employment incident occurred.

In a May 19, 2008 narrative report, Dr. Sirota provided findings on physical and x-ray examination and opined that appellant sustained possible lumbosacral herniated disc and radiculitis/radiculopathy. His August 4 and September 8, 2008 disability certificates found that appellant was totally disabled until October 6, 2008. This evidence, however, does not contain a firm diagnosis of a back condition and failed to discuss how the diagnosed condition was caused by the accepted employment incident. As Dr. Sirota's report and disability certificates do not contain a firm diagnosis and a reasoned medical opinion regarding the cause of appellant's

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<sup>7</sup> *Thomas L. Agee*, 56 ECAB 465 (1985); *see Merton J. Sills*, 39 ECAB 572 (1988).

<sup>8</sup> *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

current back condition, they are insufficient to establish that she sustained an employment injury causally related to the May 14, 2008 employment incident.<sup>9</sup>

Dr. Sirota's June 2, 2008 report ruled out lumbosacral herniated disc and radiculitis/radiculopathy. He did not address whether appellant sustained a back condition caused or contributed to by the accepted employment incident.

Dr. Sirota's August 4 and October 27, 2008 reports found that appellant suffered from lumbosacral degenerative disc disease. He did not explain how the diagnosed condition was caused or contributed to by the accepted employment incident.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted May 14, 2008 employment incident. Appellant did not meet her burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on May 14, 2008, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 17 and July 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 2, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> See *Willie M. Miller*, 53 ECAB 697 (2002).