



On appeal appellant, through her attorney, contends that OWCP's decision is contrary to fact and law.

### **FACTUAL HISTORY**

On January 9, 2007 appellant, then a 37-year-old nurse, filed a traumatic injury claim alleging that on December 22, 2006 she slipped on a wet floor and sustained an injury to her left lower back and hip pain with spasm. On March 7, 2007 OWCP accepted her claim for lumbosacral spondylosis without myelopathy at L5-S1 with encroachment. It paid compensation and medical benefits.

The record contains a December 20, 2006 magnetic resonance imaging (MRI) scan of appellant's spine that was interpreted by Dr. Robert Barton Price, a Board-certified radiologist, as evincing spondylosis on the right L5-S1. A subsequent MRI scan taken on May 2, 2007 was interpreted by Dr. Adam K. Olmsted, a Board-certified radiologist, as showing very shallow right paracentral mixed disc protrusion at L4-5 which did contain an annular tear and did abut the right L4 nerve root within the lateral recess but did not displace it.

On April 1, 2008 appellant returned to work as a modified registered nurse.

In an April 8, 2008 progress note, Dr. Brian S. Vanderhoof, appellant's treating osteopath, indicated that he sent appellant back to work but that she had a lot of discomfort. He listed his impression as slight exacerbation of lower lumbar pain related to bilateral sacroiliitis. Dr. Vanderhoof indicated that he was going to cut her hours back to four per day and continue other restricted duties of no lifting and squatting. In a May 5, 2008 report, he noted that appellant had a flare up of predominantly lower back pain after a fall at the Family Dollar store on April 23, 2008. Dr. Vanderhoof noted that she was doing better, but had to stop working and was not working at the moment as her back hurt. He listed his impression as a flare up of bilateral sacroiliitis that she had prior to the fall. Dr. Vanderhoof continued to treat appellant including treatment with SI joint injections. Appellant continued to miss intermittent time from work.

A July 9, 2008 MRI scan was interpreted by Dr. Harold F. Keyserling, a Board-certified radiologist, as showing mild degenerative changes in the lower lumbar spine with possible impingement of the existing right L4 and L5 nerve roots by disc material.

On January 7 and February 25, 2009 appellant had a right L5, S1, S2, S3 medial branch/dorsal ramus radiofrequency neurotomies under fluoroscopic guidance. In an April 16, 2009 report, Dr. Vanderhoof indicated that these procedures were helpful and listed his impression as resolving lower lumbar pain with bilateral sacroiliitis.

Another MRI scan was completed on May 27, 2009 which was interpreted by Dr. Pradeep K. Amesur, a Board-certified radiologist, as showing at the L4-L5 level right foraminal and extraforaminal herniated nucleus pulposus resulting in moderate grade right foraminal stenosis with abutment of existing right L4 nerve root. At the L5-S1 level, Dr. Amesur noted shallow disc displacement, broad-based, with focal protrusion, right foraminal and extraforaminal, mildly narrowing the right foramen with abutment of the existing right L5

nerve root. He noted facet arthrosopathic changes as well and that the left foramen appeared marginally narrowed with the protruding disc in close proximity to the existing L5 nerve root.

In a May 29, 2009 note, Dr. Vanderhoof found significant resolution of left lumbar and leg pain with a herniated nucleus pulposus at the L4-5 level and a focal disc protrusion at the L5-S1 level as well as clinical symptoms of sacroiliitis. In a June 30, 2009 report, he indicated that appellant was doing a lot more walking and that he was not going to pursue any active treatment at this time.

On July 14, 2009 the employing establishment offered appellant a position as a registered nurse in a full-time sedentary position. Appellant accepted this position on July 30, 2009. His employment was effective August 17, 2009. As appellant's wages met or exceeded the wages of the job held when injured, OWCP terminated her compensation effective August 16, 2009.

However, in an August 14, 2009 report, Dr. Vanderhoof indicated that he wrote appellant a work excuse to limit her to four hours per day over the next six weeks. In an August 21, 2009 report, he noted that appellant did return to work but that they did not abide by her restrictions and she was hurting more today. Dr. Vanderhoof listed his impressions as exacerbation of left lower lumbar pain with question of myofascial pain; bilateral sacroiliitis which has responded well to the radiofrequency procedures; and herniated nucleus pulposus at the L4-5 level with a focal disc protrusion at the L5-S1 level.

In an August 28, 2009 medical report, Dr. Vanderhoof indicated that appellant was referred to him in 2007 for evaluation of back and leg pain. He noted that appellant has had extensive conservative treatment to include physical therapy, medication, epidural steroid injections and sacroiliac injections. Dr. Vanderhoof noted that appellant also had radiofrequency procedure to the medial branches supplying the sacroiliac joints. He indicated that appellant's diagnosis was lower back pain related to bilateral sacroiliitis. Dr. Vanderhoof noted that appellant had a herniated disc at the L4-5 level and a focal disc protrusion at the L5-S1 level. He stated that appellant had been out of work for quite some time and needed to return to work on a gradual basis. Dr. Vanderhoof noted that appellant has had flare ups of pain that were all related to her work injury. He concluded that appellant could definitely perform work under certain restrictions which would initially require limiting her hours at work and performing no lifting or repeated squatting or bending.

On September 14, 2009 OWCP's claims examiner stated that, although the job offer appeared suitable at the time it was offered, appellant's physician has indicated that appellant should work four hours per day for six weeks from his August 14, 2009 medical report. It reinstated compensation payments.

Appellant was reemployed as a nurse working modified duty four hours a day effective October 13, 2009. The employing establishment noted that the position was sedentary, requiring sitting with occasional standing, walking, reaching (not above head) and lifting no more than 15 pounds.

By decision dated October 28, 2009, OWCP stated that it had been informed that appellant was recently reemployed as a nurse working modified duty four hours a day effective

October 13, 2009, and that it was reducing appellant's monetary compensation effective October 13, 2009 based on her wages in this position. It advised that she remained entitled to medical expenses for treatment of her employment-related position.

In an October 29, 2009 note, Dr. Vanderhoof indicated that appellant was diagnosed with sacroiliitis and radiculopathy and could not work until October 30, 2009.

In a November 3, 2009 report, Dr. Vanderhoof noted that appellant presented with a follow-up visit on lower lumbar pain, worse on right. He noted that appellant has a herniated disc at the L4-5 level and protruding disc at the L5-S1 level. Dr. Vanderhoof noted that they had done extensive conservative treatment without any significant long-term relief. He listed his impressions as exacerbation of lower lumbar pain with probable discogenic pain with a herniated nucleus pulposus at the L4-5 level and a disc protrusion at the L5-S1 level. Dr. Vanderhoof also noted clinical symptoms of sacroiliitis, worse on the right than the left, but he believed that was just a component of her pain.

On December 7, 2009 appellant filed a claim for compensation for the period October 29 through November 27, 2009. Time analysis forms indicated that she was claiming compensation for eight hours per day for October 29 and November 20, 23, 24, 25, 26 and 27, 2009. By letter dated December 10, 2009, OWCP denied this claim. Its claims examiner stated that the record confirmed that appellant has been in receipt of compensation for four hours per day for lost wages from October 13, 2009 through present.

In a December 10, 2009 report, Dr. Vanderhoof wrote under history that appellant presented that date for follow up of lower lumbar pain, worse on the right than on left and noted that appellant had to miss work from November 20 through 27, 2009. He noted that he was out of the office for part of this week and that he will write a work excuse for these dates but noted that appellant needed to be seen if she was going to have to miss work.

By letter dated December 28, 2009, OWCP indicated that appellant needed to submit further evidence to support her claim for compensation for the period October 29 through November 27, 2009 within 30 days.

In a January 13, 2010 report, Dr. Murray D. Robinson, a Board-certified neurosurgeon, assessed appellant with right-sided lumbar radiculopathy unresponsive to conservative measures without compressive lesions on MRI scan. He discussed options with her and she decided to proceed with surgery, specifically a right L4-5, L5-S1 disc removal.

By decision dated January 27, 2010, OWCP denied appellant's wage-loss compensation for the period commencing October 29, 2009 because the medical evidence did not demonstrate that the claimed conditions were related to the established work event. It also denied treatment for additional conditions as the medical evidence did not demonstrate that the claimed conditions were related to the established work injury.

In a February 5, 2010 report, Dr. Vanderhoof noted that he did not see appellant initially following her injury at work, but that he understood appellant had two injuries, one on December 7, 2006 and another on December 22, 2006. He stated that the slight spur demonstrated on the December 20, 2006 MRI scan was not caused by the injury but was

something that occurs over time. However, Dr. Vanderhoof noted that the repeat MRI scan done on May 2, 2007 showed a shallow, rightward eccentric, mixed disc protrusion at the L4-5 level and a shallow disc replacement at the L5-S1 level, which was not reported on the previous MRI scan of December 20, 2006, and that this certainly could have occurred from the second injury of December 22, 2006. He then noted that the subsequent MRI scan done on May 27, 2009 showed an increased injury to the disc at the L4-5 level with a shallow disc displacement and superimposed herniated nucleus pulposus in the right foraminal and extraforaminal region with extrusion of disc material superiorly and abutment of the right L4 nerve root. Dr. Vanderhoof also noted that there was a disc displacement at the L5-S1 level with a more focal protrusion in the right foraminal and extraforaminal region, abutting the right L5 nerve root and that this was a progression of the disc injury she demonstrated on the MRI scan of May 2, 2007. He noted that this also could be related to her second injury of December 22, 2006 since there was a definite change between the MRI scan of December 20, 2006 and May 2, 2007, which was following her second injury of December 22, 2006 and certainly could have occurred from this second injury.

In a February 12, 2010 report, Dr. Vanderhoof noted that appellant had exacerbating lower lumbar and right leg pain with a shallow disc displacement at the L4-5 level with a superimposed herniated nucleus pulposus and a right foraminal and extraforaminal extrusion of disc material superiorly which resulted in moderate grade biforaminal stenosis. He also noted a focal disc protrusion at the L5-S1 level into the right foraminal region. Dr. Vanderhoof stated that he was taking appellant off work at this time as her symptoms were getting progressively worse.

On February 23, 2010 appellant requested review of the written record. She contended, *inter alia*, that she was already experiencing an exacerbation of her symptoms prior to the fall at Family Dollar. Appellant contended that her worsening condition resulted in major depression due to chronic pain. She also contended that she loved to work and desired to return to work when she was better.

On February 24, 2010 appellant filed a claim for compensation for four hours a day for the period February 1 through March 12, 2010.

On April 29, 2010 OWCP denied appellant's request for compensation for the period February 1 through March 12, 2010.

By letter dated May 14, 2010, a representative of the employing establishment stated that the first job offer he sent appellant was with a report date of August 16, 2009 and that appellant showed up for the eight-hour-per-day accepted job offer with a note saying that she could only work four hours a day, and the supervisor sent appellant home as the position could not be modified to part-time position. He noted that appellant showed up again on October 13, 2009 for the eight-hour job offer, but once again had a note that stated that she could only work four hours, but that this time it was limited to six weeks. The representative noted that after six weeks appellant presented another note extending the time. He also contended that appellant has been seen multiple times walking, bending, twisting, carrying seemingly with no difficulty. The representative noted that he saw appellant in a break in her Equal Employment Opportunity (EEO) hearing do a very quick walk from the Director's suite to the conference room.

By decision dated June 8, 2010, the hearing representative affirmed OWCP's June 8, 2010 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>2</sup> To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background support such a causal relationship.<sup>3</sup> Causal relationship is a medical issue, and the medical evidence required to establish is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimed 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 rationalized medical evidence 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 a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for lumbosacral spondylosis without myelopathy at L5-S1 with encroachment. However, it rejected appellant's claim that her herniated disc at L4-5 and protruding disc at L5-S1 were causally related to her accepted December 22, 2006 injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a herniated disc at L4-5 and protruding disc at L5-S1 causally related to her accepted injury. The Board does note that appellant has established that she has a herniated disc at L4-5 and protruding disc at L5-S1. Appellant's MRI scan done on May 2, 2007 showed a shallow, rightward eccentric, mixed disc protrusion at the L4-5 level and a shallow disc replacement at the L5-S1 level which was not reported on appellant's MRI scan of December 20, 2006, taken two days prior to her employment-related injury. The May 27, 2009 MRI scan showed an increased injury to the disc at the L4-5 level. This MRI scan also showed that at the L5-S1 level, appellant had a shallow disc displacement, broad-based with focal protrusion, right foraminal and extraforminal. However, although she has established that she experienced the noted conditions,

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<sup>2</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>3</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

she has failed to establish that these conditions were causally related to her employment injury of December 22, 2009. Dr. Robinson and the radiologists who interpreted appellant's MRI scans gave no opinion as to causal relation. The only physician in the record who gave an opinion regarding causal relationship of these injuries was Dr. Vanderhoof. In his February 5, 2010 report, Dr. Vanderhoof noted that appellant's herniated disc, which did not appear in her MRI scan of December 20, 2006 but was in evidence on her May 2, 2007 MRI scan, "certainly could have occurred from the second injury of December 22, 2006." With regard to her disc displacement at the L5-S1 level, he stated that "this also could be related to her second injury of December 22, 2006 since there was a definite change between her MRI scan of December 20, 2006 and May 2, 2007."

A medical opinion on causal relationship does not have to be one absolute certainty, but it must be one of reasonable medical certainty and not speculative or equivocal in nature.<sup>7</sup> The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>8</sup> Dr. Vanderhoof's opinion that the L4-5 herniated disc "could have" occurred from the employment injury or that the protruding disc at L5-S1 "could be related" to appellant's employment injury is speculative and not sufficient to meet appellant's burden of proof. Accordingly, the Board finds that OWCP properly denied her claim for expansion to include a claim for a herniated disc at L4-5 and a protruding disc at L5-S1.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>9</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>10</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>11</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>12</sup>

Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>13</sup> The Board will not

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<sup>7</sup> *B.P.*, Docket No. 10-1593 (issued June 8, 2011).

<sup>8</sup> *R.L.*, Docket No. 10-1309 (issued April 8, 2011).

<sup>9</sup> See *Feridoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *C.S.*, Docket No. 08-2218 (issued August 7, 2008).

<sup>13</sup> *Kharabi*, *supra* note 9.

require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's claim was accepted for lumbosacral spondylosis without myelopathy at L5-S1 with encroachment. OWCP did not accept her claim for herniated disc at L4-5 and protruding disc at L5-S1.

The Board finds that Dr. Vanderhoof's note dated October 29, 2009 indicating that appellant could not work until October 30, 2009 and listing appellant's diagnosis as sacroiliitis and radiculopathy is sufficient to allow wage-loss compensation for October 29, 2009. However, appellant has not submitted sufficient medical evidence to establish that she was disabled from November 20 through 27, 2009. There is no medical report indicating that she was seen at that time and was found to be disabled. In his December 10, 2009 report, Dr. Vanderhoof stated that he was going to give appellant a work excuse for November 20 through 27, 2009. He noted that she indicated that she was out of work then and that he was out of the office for part of this week as well. However, as no medical doctor saw appellant during this time period, there is no contemporaneous medical evidence establishing that she was disabled from November 20 through 27, 2009.

With regard to appellant's claim for compensation for the period February 1 through March 12, 2010, she has not submitted any medical evidence indicating that she was disabled for this period of time due to her accepted injury. Dr. Vanderhoof does indicate in his February 12, 2010 report that he was taking her out of work at that time because her symptoms were getting progressively worse and she could only stand for about 15 minutes and sit for about 15 minutes at a time. However, this report addresses appellant's L4-5 disc displacement and focal disc protrusion, conditions which were not accepted by OWCP as related to the December 22, 2006 work injury.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>15</sup> As appellant has not submitted medical evidence to support that she was disabled due to her employment injury from November 20 through 27, 2009 or from February 1 through March 12, 2010, OWCP properly denied compensation for these periods of time.

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<sup>14</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>15</sup> *William A. Archer*, 55 ECAB 674, 679 (2004).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established that her herniated disc at L4-5 and protruding disc at L5-S1 is employment related. The Board further finds that appellant has not established her claim for compensation for November 20 through 27, 2009 and March 12, 2010. However, the Board finds that appellant has established a claim for compensation for October 29, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 8, 2010 is modified to find that appellant is entitled to wage-loss compensation for October 29, 2009. In all other respects, the decision of June 8, 2010 is affirmed. OWCP's decision of April 29, 2010 is also affirmed.

Issued: August 8, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board