

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YVONNE TARWATER and DEPARTMENT OF THE ARMY,  
ARMED FORCES COMMAND, COMMAND SAFETY OFFICE, Fort Drum, NY

*Docket No. 02-500; Submitted on the Record;  
Issued July 18, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a back condition causally related to factors of her employment.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a back condition causally related to factors of her employment.

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.<sup>1</sup>

A claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>2</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>3</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>4</sup>

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<sup>1</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>2</sup> See *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>3</sup> See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>4</sup> *Id.*

On June 24, 1999 appellant, then a 49-year-old security specialist, filed an occupational disease claim alleging that she sustained an injury to her lower back due to long periods of sitting in performing her job.

In a decision dated September 23, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that appellant's back condition was causally related to factors of her employment.

By letter dated October 20, 1999, appellant requested a hearing that was held on August 31, 2000.

By decision dated and finalized November 15, 2000, an Office hearing representative affirmed the Office's September 23, 1999 decision.

By decision dated August 13, 2001, the Office denied modification of its November 15, 2000 decision.

In a medical report dated November 4, 1998, Dr. John Krawchenko, a neurosurgeon, stated that appellant had back and left leg pain that began two months earlier with "no injuries at work described or car accidents." He provided findings on examination and diagnosed a herniated disc at L4-5 and L5-S1 with left lumbar radiculopathy. However, Dr. Krawchenko did not relate appellant's condition to her employment and, in fact, noted that appellant did not give a history of an injury at work.

In a report dated December 10, 1998, Dr. Paul S. Curtis, an orthopedic surgeon, stated that appellant described an "insidious onset" of pain in her low back and left leg six months earlier which worsened. He noted that x-rays and a magnetic resonance imaging (MRI) scan revealed degenerative changes of the spine, particularly at L4-5 and L5-S1 and a herniated disc at L4-5. Dr. Curtis diagnosed acute low back pain, left sciatica and spinal stenosis. However, he did not provide an opinion as to the cause of these conditions.

In a report dated June 18, 1999, Dr. Curtis stated that appellant had markedly increased pain in her low back radiating into her left leg and foot. He stated that her symptoms began in July 1998 and noted that her job involved operating a computer and sitting for prolonged periods. Dr. Curtis stated that "The onset of her pain was somewhat insidious but is markedly aggravated by her work activity, that is her prolonged sitting." He noted that appellant felt she could not work and he opined that her disability was "certainly connected to her back problem which at least historically, is causally related to her work activity." However, he did not provide sufficient medical rationale explaining how appellant's back condition was causally related to her employment. Although Dr. Curtis opined that appellant's activities aggravated her back conditions, he did not provide rationale explaining how the underlying condition was accelerated or materially adversely affected by the employment activities.<sup>5</sup>

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<sup>5</sup> See *John T. Lattany*, 37 ECAB 129, 141 (1985).

In a report dated August 13, 1999, Dr. Curtis stated:

“My note of [June 18, 1999] indicates that [appellant] gave a history of significant aggravation of her back problem due to her job which requires prolonged sitting and that her work activity significantly increased her back problem. I am unable to comment further other than to reiterate the history as related to me by [appellant]. It is certainly possible that prolonged sitting and prolonged positioning in a flexion posture may weaken the posterior wall of the annulus fibrosis eventually resulting in failure and subsequent protrusion of the nucleus pulposus resulting in the current situation. [Appellant] believes that this began during the course of her work[-]related activity and is significantly aggravated by that activity. I will include copies of her MRI [scan] which describes the anatomic abnormalities. Again, the medical explanation is supported by the history elicited from [appellant].”

However, the opinion of Dr. Curtis that it is “possible” that prolonged sitting “may” weaken the wall of the annulus fibrosis and result in a disc protrusion is speculative and not sufficient to establish causal relationship in this case. While the opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.<sup>6</sup>

In a report dated May 4, 1999, Dr. Bruce E. Fredrickson, a professor of orthopedic and neurological surgery, stated that appellant began experiencing low back and bilateral leg symptoms one year earlier without specific trauma. He provided findings on examination and noted that x-rays showed marked collapse of the discs at L4-5 and L5-S1. Dr. Fredrickson diagnosed instability of L4-5 and L5-S1 with some evidence of radiculopathy. However, he did not provide an opinion of the cause of appellant’s back condition.

In a report dated July 19, 1999, Dr. Charles J. Moehs, an employing establishment physician specializing in occupational health who was asked by the employing establishment to review appellant’s claim, stated that appellant had multiple back problems beginning in the spring of 1998. He noted that appellant performed most of her daily work sitting down. Dr. Moehs stated:

“There is no evidence that sitting *per se* can cause degenerative back disease and the supposition that [appellant’s] problem is a result of her prolonged sitting is not founded nor does it seem appropriate.”

In a report dated October 1, 1999, Dr. Curtis stated that appellant’s symptoms seemed to have “occurred during the course of her work[-]related activity, were definitely aggravated by her work[-]related activity ... which involves prolonged sitting and indeed this may be a competent producing cause of her problem. This, of course, is based on her history.” However, where an opinion supporting causal relationship is based solely on the claimant’s history or on the lack of symptoms prior to employment and the manifestation of symptoms during

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<sup>6</sup> See Jacquelyn L. Oliver, 48 ECAB 232, 237 (1996).

employment, it is of diminished probative value and insufficient to meet the claimant's burden of proof in establishing causal relationship.<sup>7</sup>

In a report dated January 18, 2001, Dr. Curtis stated that appellant had increasing low back pain radiating into her left leg. He stated:

“[Appellant] has failed [filed?] for [w]orkers’ [c]ompensation in this case indicating that her sitting for prolonged periods of time, etc., aggravated and caused her low back problem. The literature substantiates this and we will be obtaining copies of articles to support the contention that ‘working activities like lifting, pulling, pushing, bending and *sitting*, were highly associated with low back pain.’ Another article indicated that loss of lumbar lordosis associated with certain sitting postures increased intra discal pressure and certainly may contribute to disc injury ... it certainly appears to me that there is support for the contention that [appellant’s] postural situation at work caused her low back pain.” (Emphasis in the original.)

However, Dr. Curtis failed to provide medical rationale explaining in, appellant’s specific case, how her job activities caused or aggravated her back condition.

In support of her claim, appellant also submitted copies of pages from medical journals. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.<sup>8</sup>

Appellant failed to provide rationalized medical evidence, based on a complete and accurate factual background, establishing that her back condition was causally related to factors of her employment. The reports from Dr. Curtis address the issue of causal relationship but are of diminished probative value because he did not provide sufficient medical rationale for his opinion that appellant’s job caused or aggravated her back conditions. Therefore, she failed to meet her burden of proof and the Office properly denied her claim for compensation.

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<sup>7</sup> See *Thomas R. Horsfall*, 48 ECAB 180, 183 (1996).

<sup>8</sup> See *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decisions of the Office of Workers' Compensation Programs dated August 13, 2001 and November 15, 2000 are affirmed.

Dated, Washington, DC  
July 18, 2002

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member