



be stiff and hurt when he got up to sweep out the cases near the end of his shift. He completed his shift, went home and went to sleep, noting as follows: “When I awoke my back was very stiff and I was hurting down my spinal column. I was also hurting in the back of my neck and across my shoulders.”

Appellant was seen in a hospital emergency department on May 12, 2001 for neck pain radiating down his back, with no numbness in his arms or legs. Dr. A. MacKinnon diagnosed “trapezius muscle strain (shoulder/neck muscles) from repetitive lifting” and prescribed medications and no work for one day.

On May 17, 2001 appellant was examined by Dr. E. Robert Wanat, an osteopath, who diagnosed a cervical strain and imposed work limitations. A physician’s assistant in Dr. Wanat’s office took a history from appellant on May 17, 2001 that approximately a week ago at work he injured himself while “working on a new machine that required him to do a lot of repetitive twisting with his upper back and with his feet planted.” The history continued that appellant had pain in his mid-back toward the end of the night that moved up to his trapezius area by the next morning, with the pain “mostly over the cervical area.”

In a May 25, 2001 report, Dr. Wanat stated that appellant was seen for a “recheck following a cervical and upper thoracic strain/sprain from when he was put on a new piece of equipment of sorting mail and sustained strain in those areas. He states that he is continuing to have some shooting burning pain primarily in the upper thoracic and lower cervical areas.” Dr. Wanat described his findings on examination of appellant’s lower cervical and upper thoracic areas, diagnosed cervical and upper thoracic strain/sprain, and initiated osteopathic manipulative therapy for the cervical and upper thoracic area. In a June 1, 2001 report, Dr. Wanat stated that appellant’s pain in the neck, upper back and trapezius area had not improved significantly, described findings on examination of appellant’s cervical and thoracic spine, and referred appellant for physical therapy to relax, stretch and strengthen the muscles in his cervical, thoracic and trapezius areas. From June 13 to July 9, 2001 appellant underwent eight sessions of physical therapy, consisting of cervical traction and of ultrasound to the cervical, thoracic and trapezius areas. In a June 15, 2001 report, Dr. Wanat noted that appellant continued “to have pain and pulling in his cervical and upper thoracic area, including his trapezius muscles,” and diagnosed cervical and thoracic spine strain/sprain that was slowly resolving.

In a report of a June 29, 2001 “follow-up of his back pain, cervical and thoracic,” Dr. Wanat stated that x-rays of appellant’s cervical and thoracic spine that day showed some evidence of degenerative joint disease,<sup>1</sup> and that examination revealed good upper and lower extremity strength, normal deep tendon reflexes of the lower extremities, and functionally normal ranges of motion in his cervical, thoracic and lumbar area. Dr. Wanat diagnosed cervical and thoracic sprains, recovery being complicated by an underlying arthritic degenerative process.

In an August 16, 2001 report, Dr. Jonathan J. Paley, a Board-certified orthopedic surgeon, stated that appellant had “an allowed claim for cervical spine strain and lumbosacral

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<sup>1</sup> Dr. Wanat’s June 29, 2001 report indicated that x-rays also showed degenerative joint disease of the lumbar spine, but the remainder of the report and the radiologist’s report showed that x-rays were taken only of the cervical and thoracic spines.

spine strain” that occurred as a result of an employment injury on May 11, 2001. Dr. Paley prescribed physical therapy.

By letter dated October 2, 2001, the Office advised appellant that it had accepted his claim for cervical strain and thoracic strain, and that physical therapy was authorized if prescribed by his physician.

Subsequent to this acceptance, the Office received additional reports from Dr. Paley. In a July 18, 2001 report, Dr. Paley set forth a history of a May 11, 2001 injury to appellant’s neck and low back area, and stated that examination of appellant’s lumbosacral spine showed painful range of motion, multiple trigger points and a normal sensory examination. Dr. Paley diagnosed cervical spine strain, aggravation of preexisting cervical spondylosis and lumbosacral spine strain. In a September 7, 2001 report, Dr. Paley diagnosed cervical spine strain and lumbar spine strain, and recommended physical therapy, which the Office authorized on January 22, 2002. In a February 27, 2002 report, Dr. Paley stated that appellant needed a lumbosacral corset, but the Office, by letter dated March 12, 2002, refused to authorize a lumbosacral corset since appellant’s claim was not accepted for a lumbar injury.

In a May 7, 2002 report, Dr. Paley stated that his original diagnosis, when he first saw appellant on July 18, 2001, was consistent with sprains of the cervical spine and of the lumbar spine, but not a sprain of the thoracic spine, which he felt was an incorrect diagnosis. Dr. Paley recommended a lumbar magnetic resonance imaging (MRI) scan “to demonstrate what well may be lumbar pathology.”

By letter to appellant dated August 16, 2002, the Office noted that the first mention of a lumbar strain was in Dr. Paley’s report dated August 16, 2001, three months after the employment injury, and that “Dr. Paley did not provide objective findings of lumbar strain nor did he explain how he came to believe the lumbar strain was due to your injury.”

In a September 24, 2002 report, Dr. Paley stated, “Just because I am the first caring physician who diagnosed a lumbosacral spine strain in [appellant] gives you no right to deny this claim.” In a November 21, 2002 letter, the Office advised appellant that the additional reports from Dr. Paley were still insufficient to establish a lumbar condition related to his employment injury. In a January 22, 2003 report, Dr. Paley, after referring to his July 18, 2001 description of his examination of appellant’s lumbar spine, stated, “It is clear to me that we have an individual who hurt himself at work, and complained of pain in the cervical and lumbar areas. His examination was consistent with ... a lumbar spine strain.”

By decision dated March 10, 2003, the Office found that the evidence did not establish that appellant sustained an injury to his lumbar spine on May 11, 2001.

Appellant requested a hearing, and submitted additional reports from Dr. Paley: a February 18, 2003 report stated that appellant sustained an aggravation to the preexisting condition of his lumbar spine in the May 11, 2001 employment injury, and a March 31, 2003 report stated that a recent MRI scan showed spondylosis of the lumbar spine that was quiescent until he injured himself. At the hearing held on January 13, 2004, appellant testified that on his emergency room visit on May 11, 2001 he told them he had extreme pain from the base of his

skull down to his hips, that he told the physical therapist that he saw, at Dr. Wanat's direction, that he was hurting down his spine and not in his shoulders but that she performed physical therapy only on his shoulders, and that he also told Dr. Wanat that he was hurting all the way down to the tip of his spine but no one listened to him.

By decision dated March 16, 2004, an Office hearing representative found that appellant failed to meet his burden of proof that he sustained an injury to his lumbar spine on May 11, 2001. The hearing representative found that the doctor's and physical therapist's notes did not support appellant's allegations that he complained of lumbar pain before his July 18, 2001 visit to Dr. Paley, and that it was not plausible that all the medical providers who treated appellant during the first two months after his employment injury failed to document any complaints of low back pain.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or 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. An employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>3</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>4</sup>

### **ANALYSIS**

Dr. Paley, a Board-certified orthopedic surgeon, diagnosed a lumbosacral sprain/strain upon his first examination of appellant on July 18, 2001, and has maintained that this condition was related to appellant's May 11, 2001 employment history. However, a physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician.<sup>5</sup> It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>6</sup> Dr. Paley's conclusion on causal relationship is based on an assumption that the Office accepted a lumbar injury and on a history that appellant first complained of pain in his lumbar area at the time of his injury. Although this history is consistent with appellant's

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>4</sup> *Dorothy Kelsey*, 32 ECAB 998 (1981).

<sup>5</sup> *Patricia M. Mitchell*, 48 ECAB 371 (1997).

<sup>6</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

testimony at a January 13, 2004 hearing, it is not corroborated by the evidence more contemporaneous with the occurrence of the May 11, 2001 employment injury than Dr. Paley's July 18, 2001 report.

Appellant's claim form and accompanying statement specifically mentioned neck and shoulder pain associated with his May 11, 2001 employment injury, but their references to pain in the "spinal area," in "the back" and "down [the] spinal column" are nonspecific, and could just as readily be read to refer to the thoracic spine area as to the lumbar spine, given the starting point of the neck and shoulders. Appellant testified that he told the emergency room personnel, Dr. Wanat and the physical therapist who treated him in June and July 2001 of his low back pain but that they all ignored these complaints. Like the Office hearing representative, the Board finds it implausible that appellant complained of low back symptoms to at least four medical professionals -- Dr. MacKinnon at the emergency room, Dr. Wanat's physician's assistant, Dr. Wanat and a physical therapist who saw him eight times -- yet none of their reports would reflect any such complaint or any examination of appellant's lumbar area. In a June 29, 2001 report, Dr. Wanat, who was then seeing appellant for the fifth time, first directed examination to appellant's low back, but found it essentially normal with regard to range of motion and leg strength and reflexes. As Dr. Paley's reports are based on an inaccurate history of the injury that is not supported by the contemporaneous evidence, they have diminished probative value and are insufficient to meet appellant's burden of proof.<sup>7</sup>

The Board's finding that appellant did not complain of or seek treatment for a low back problem for at least six weeks following his May 11, 2001 employment injury casts serious doubt on, but would not preclude a finding that appellant sustained an injury to his lumbar area on May 11, 2001. However, to support such a finding, the medical evidence would have to clearly explain how the low back condition did not manifest itself for over six weeks yet was still caused or aggravated by the May 11, 2001 employment injury. There is no such medical evidence in the case record. As noted above, Dr. Paley's conclusion on causal relationship is based upon a history of immediate complaints of low back pain, a history not supported by the evidence in the record.

### CONCLUSION

Appellant has not met his burden of proof to establish that he sustained an injury to his lumbar spine area on May 11, 2001.

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<sup>7</sup> See *Idella Whitaker*, 38 ECAB 473 (1987); *Mack Hoy*, 33 ECAB 482 (1982).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member