

FACTUAL HISTORY

On July 24, 2002 appellant, then a 48-year-old flight instructor and a technician,¹ filed a notice of occupational disease alleging that he developed degenerative disc disease and multiple herniated discs as a result of having to sit for prolonged periods of time in the pilot's seat of a C130 aircraft while in the performance of duty. He related that on July 24, 2002 he received an official notification of disqualification from flight status based on his diagnosed back condition and his inability to carry out his work requirements. He noted that he was last exposed to work conditions which caused his back condition on October 31, 2001.

On September 25, 2002 the Office advised appellant of the factual and medical evidence required to establish his claim for compensation. He was informed of his burden to submit a reasoned medical opinion supporting a causal relationship between his diagnosed back condition and the alleged work factors.

In a personal statement dated October 4, 2002, appellant related that he had regularly flown a C130 aircraft from 1981 to 2000, logging up to 5258 hours flight time. He alleged that he first experienced back pain on April 6, 1991 when he was on overseas duty and strained his back while getting dressed. He reported that he was confined to bed for two days from that injury and that his back pain increased over the years from prolonged periods of sitting as a flight instructor. Appellant stated that he was medically disqualified from aviation service on June 13, 2002 due to his diagnosed back condition. On September 9, 2002 appellant received a notice of proposed removal from the employing establishment based on his inability to perform flight duties as a condition of his job. He noted that, while there was no identified cause of his back condition, the evidence showed that prolonged sitting had aggravated his back problems.

In support of his claim, appellant submitted a copy of a magnetic resonance imaging (MRI) scan dated November 13, 2001 showing multilevel degenerative disc disease, multiple disc herniations and mild stenosis at L4-5. In a February 4, 2002 report, Dr. Paul Marcott, a Board-certified neurosurgeon, discussed appellant's ten-year history of low back pain, noting that appellant stated that the pain was exacerbated by transitions of posture and also prolonged sitting as a pilot. He attributed appellant's pain symptoms to the degenerative findings on the MRI scan and recommended that appellant modify his lifestyle to accommodate for the pain he experienced while at work. He did not feel that appellant was a good candidate for fusion surgery. Appellant also submitted physical therapy notes documenting that he underwent lumbar traction, along with a work restriction note dated June 11, 2002 from Dr. Carolyn Ryan, an osteopath, who recommended that appellant alternate between sitting and standing throughout his work due to his low back pain.

In an October 4, 2002 statement, Colonel Timothy Thompson, appellant's commanding officer, confirmed that appellant spent two hours per day in the pilot's seat at least three times per week and advised that during appellant's last few years of flying he traveled every three months to overseas locations and would therefore spend longer periods of time sitting.

¹ Appellant performed active military service at certain times. However, his full-time employment with the employing establishment was in the civilian capacity of a flight instructor.

In a decision dated October 29, 2002, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's work activities and the diagnosed back condition. Appellant subsequently requested a hearing, which was held by telephone conference on June 29, 2003.² Appellant also submitted a number of articles regarding ergonomics and back pain in pilots. In a decision dated September 5, 2003, an Office hearing representative determined that it was accepted as a factor of appellant's federal employment that appellant piloted the CA130 aircraft for about one to two hours per week as a civilian flight instructor. The Office hearing representative, however, found that the medical evidence was insufficient to establish a causal relationship between the established work factor and appellant's diagnosed back condition. The Office hearing representative therefore affirmed the Office's October 29, 2002 decision.

LEGAL PRECEDENT

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.³ The Board has held that opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.⁴

ANALYSIS

In this case, the Office has accepted that appellant was required to sit for prolonged periods of time as a requirement of his federal employment as a flight instructor; however, the Office determined that the medical evidence was insufficient to satisfy appellant's burden of proof on causal relationship.

The Board has carefully reviewed the record and finds that there is no medical report of record which addresses with medical rationale how appellant's back condition was caused or aggravated by the alleged work factors. The MRI scan report indicates that appellant has multilevel degenerative disc disease, disc herniations and mild spinal stenosis at L4-5. Dr. Marcott related appellant's description of symptoms of low back pain following prolonged periods of sitting in the pilot's seat, but the physician did not offer his own opinion as to the

² Appellant testified that he was on active duty from January 4 to April 28, 1991, and that at times after April 28, 1991 he performed his duties as a flight instructor in military status rather than as a civilian flight instructor.

³ *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

cause of appellant's degenerative back condition. He also did not provide a reasoned medical opinion⁵ that appellant's back condition was in any way caused or aggravated by appellant's work duties. At best, Dr. Marcott's opinion is speculative as to the etiology of appellant's low back pain, stating only that it could be related to degenerative changes found on the MRI scan.⁶ Although Dr. Ryan imposed work restrictions for appellant's back condition, she also failed to address the issue of causal relationship.

Appellant is likewise unable to satisfy his burden of proof on causation through the submission of physical therapy notes and medical articles. A physical therapist is not a physician for the purposes of the Act, therefore the physical therapy notes do not constitute medical evidence.⁷ Medical articles are generalized and are not determinative of whether appellant's back condition was caused or aggravated by alleged work factors.⁸ In the absence of rationalized medical opinion evidence supporting a causal relationship between appellant's back condition and factors of his federal employment, the Board concludes that appellant's claim for compensation was properly denied.

CONCLUSION

The Board finds that appellant failed to satisfy his burden of proof to establish that he sustained a back condition causally related to factors of his federal employment.

⁵ See *Solomon Polen*, *supra* note 3.

⁶ Dr. Marcott did not distinguish between appellant's prolonged sitting as required by his duties as a flight instructor in active duty or military reserve status rather than as a civilian flight instructor. The Board has held that an injury sustained by a civilian employee while in a military reserve status does not occur in the performance of duty because such an injury would have an insufficient relation to that employee's civilian job duties. See *Roberto Rodriquez*, 50 ECAB 124 (1998). The Board notes that in order for Dr. Marcott's opinion to be sufficiently reasoned on the issue of causal relationship, he was required to address the requirements of appellant's civilian flight instructor duties in relation to the alleged work injury.

⁷ See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁸ The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment factors involved. See *Gloria J. McPherson*, 51 ECAB 441 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 5, 2003 and October 29, 2002 are affirmed.

Issued: February 19, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member