

physically perform the required duties. In response to a request by the Office dated October 10, 2002, appellant submitted additional medical evidence in support of her claim.

In a decision dated November 18, 2002, the Office found the evidence of record insufficient to establish that appellant's current back condition was causally related to her federal employment. On December 2, 2002 and March 3 and July 7, 2003 appellant requested reconsideration of the Office's prior decision and submitted additional medical evidence in support of her requests. By merit decisions issued February 7, June 2 and September 2, 2003, respectively, the Office found the newly submitted evidence insufficient to warrant modification of its prior decision.

In support of her claim, appellant submitted the results of computerized tomography (CT) scans, x-rays and magnetic resonance imaging (MRI) scans of the cervical and lumbar spine performed between April 27 and December 1, 2001, which revealed: bilateral L4 spondylolysis with Grade 1 L4-5 spondylolisthesis and associated moderate osseous foraminal narrowing and bilateral partial spondylolysis of L5 greater right than left, with associated mild right to left rotary change of L5 on S1 and incomplete formation of the left L5 and L3 lamina; scoliosis of the lumbar spine, first degree spondylolisthesis of the L5 on S1 and degenerative joint disease of L5 and S1; and Grade 2 spondylolytic spondylolisthesis at L4-5 resulting in severe bilateral foraminal stenosis and right posterolateral end plate osteophytes at L5-S1 resulting in moderate right foraminal stenosis. Early x-rays, CT scans and MRI scans dating from June 26, 1987 to February 13, 1995, however, reveal that, prior to her April 6, 2001 employment incident, appellant was diagnosed with: spina bifida of S1, pars interarticularis defect of the right L5 consistent with spondylolysis, L6 spina bifida occulta and herniated nucleus pulposus of C5-6 and C6-7. Despite these findings, appellant was found fit for duty as a cook in examinations performed on September 11, 1996, August 21, 1998, June 25, 1999 and May 3, 2000.

Appellant submitted treatment notes and form reports from Dr. Evaristo Quinones,¹ whom she first saw on April 9, 2001, a few days after the April 6, 2001 incident. In his treatment note dated April 9, 2001, Dr. Quinones noted that appellant presented complaining of back pain which she stated had begun the previous Friday while she was lifting something at work. He diagnosed left shoulder pain and low back pain with sciatic involvement and indicated by check mark and annotation that the back condition was causally related to appellant having lifted heavy objects at work. In a follow-up note dated April 13, 2001, Dr. Quinones noted that appellant's back was not responding to treatment and that he recommended that she undergo an MRI scan. The MRI scan performed on April 27, 2001 revealed Grade 2 spondylolytic spondylolisthesis at L4-5 resulting in severe bilateral foraminal stenosis and right posterolateral end plate osteophytes at L5-S1 resulting in moderate right foraminal stenosis. In a Form CA-16 medical report dated November 8, 2002, Dr. Quinones again noted appellant's history of injury and entered a diagnosis of low back pain with sciatic involvement. He indicated by checking a box marked "yes" that appellant's back condition was causally related to her employment and explained that, even though appellant was suffering with back problems before the April 6, 2001 incident, pain medication and muscle relaxants were helping her until the day of her injury when her back condition worsened. In follow-up form reports dated March 3 and June 27, 2003,

¹ Dr. Quinones' practice area and qualifications are unknown.

Dr. Quinones again noted the history of the April 6, 2001 injury, diagnosed low back pain with sciatic involvement and indicated by check mark and written annotation that he believed that appellant's back condition was causally related to the April 6, 2001 employment incident.

The record also contains medical reports from Dr. Christopher E. Wolfla, a neurological surgeon to whom appellant was referred by Dr. Quinones. In narrative reports dated July 19, 2001 and February 14, 2002, Dr. Wolfla noted appellant's history of having lifted heavy food pans and a mop bucket at work on April 6, 2001 and listed his findings on physical examination. Dr. Wolfla diagnosed L4 and possible L5 radiculopathy, degenerative disc disease at L4-5 and L5-S1 with Grade 1 and Grade 2 spondylolisthesis at L4-5, with associated fractures of the pars interarticularis, bilateral spondylolysis of L5 with some rotary changes and spina bifida occulta at L3, L4 and L5. On March 15, 2002 appellant underwent back surgery performed by Dr. Wolfla and, in reports dated April 15, June 20 and September 16, 2002 and March 17, 2003, he continued to follow appellant's progress, but did not address the causal relationship, if any between appellant's diagnosed conditions and her employment. However, in his final report of record dated July 2, 2003, Dr. Wolfla reiterated his above-listed diagnoses and indicated, by check mark, that appellant's diagnosed conditions were causally related to her employment. Dr. Wolfla further explained his conclusion by stating that appellant reported no history of back symptoms prior to her April 6, 2001 employment incident and that her back pain began on that date.

In reports dated November 27, 2002 and June 27, 2003, from Dr. Maribel Colon-Santiago, a general practitioner whom appellant first saw on May 17, 2001, noted the April 27, 1991 MRI scan findings, diagnosed low back pain and indicated by check mark that appellant's condition was causally related to her employment injury. Dr. Colon-Santiago did not provide any additional explanation for her conclusion.

The record also contains several reports from Dr. Juan A. Maldonado, a Board-certified internist whom appellant first saw on July 9, 2001. In a form report dated October 24, 2002, Dr. Maldonado noted appellant's history of degenerative disc disease and diagnosed lumbar disc disease and degenerative disc disease, but did not address the history of appellant's injury or the causal relationship, if any between appellant's employment and her diagnosed conditions. In a narrative report dated June 19, 2003, Dr. Maldonado noted that appellant reported experiencing back pain after lifting heavy pots and a mop bucket at work on April 6, 2001. He noted the MRI scan findings and described appellant's surgical and conservative treatment, but did not discuss the relationship, if any, between appellant's diagnosed conditions and her employment. In his final report of record, a form report dated June 20, 2003, Dr. Maldonado again noted the history of appellant's April 6, 2001 employment incident and diagnosed low back pain. He checked a box marked "no" to indicate that appellant did not have any history or evidence of concurrent or preexisting injury, disease or physical impairment and checked a box marked "yes" to indicate that appellant's diagnosed conditions were causally related to her employment. Dr. Maldonado did not provide any written explanation for his conclusions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.³ In order to meet her burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

ANALYSIS

In this case, it is undisputed that appellant worked as a cook for the employing establishment and that, on April 6, 2001, she experienced back pain while lifting a tray of food. She submitted a witness statement from Robert Ware who confirmed that he was with appellant on the date in question and, that while she was lifting a pan of food he heard her back pop and saw that she appeared to be in a lot of pain. Therefore, the only issue is whether appellant established that she sustained an injury as a result of her employment duties.

Appellant submitted numerous physician’s reports in support of her claim. The vast majority of these reports contain no discussion of the causal relationship, if any, between appellant’s diagnosed conditions and the April 6, 2001 employment incident or contain only a check mark, without further explanation, to indicate that such a causal relationship existed. The

² *Charles E. Evans*, 48 ECAB 692 (1997).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (“traumatic injury” and “occupational disease” defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Charles E. Evans*, *supra* note 2.

Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.⁷ However, in his reports dated November 8, 2002 and March 3 and June 27, 2003, Dr. Quinones noted appellant's history of injury and her history of prior back problems and entered a diagnosis of low back pain with sciatic involvement. The Board notes that, although Dr. Quinones indicated by checking a box marked "yes" that appellant's back condition was causally related to her employment, he annotated his conclusion by stating that, even though appellant was suffering with back problems before the April 6, 2001 incident, the fact that she was able to control her condition with pain medication and muscle relaxants prior to April 6, 2001 indicated that the employment incident had worsened her condition. While Dr. Quinones' opinion does consist of more than a check mark, the Board finds that he did not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her current back condition is causally related, either directly or through aggravation, precipitation or acceleration, to her employment, as he did not fully explain his opinion with medical reasoning.⁸ An award of compensation may not be based on surmise, conjecture or speculation or a claimant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.⁹ Therefore, appellant has not submitted sufficient medical evidence to establish her claim.

CONCLUSION

The Board finds that appellant failed to establish that that her current back condition is causally related to her employment.

⁷ *Barbara J. Williams*, 40 ECAB 649 (1989).

⁸ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998); *Beverly J. Duffey*, 48 ECAB 569 (1997); *Lee R. Haywood*, 48 ECAB 145 (1996).

⁹ *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 2, June 2 and February 7, 2003 and November 18, 2002 are hereby affirmed.

Issued: January 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member