



By decision dated April 10, 2001, the Office denied appellant's claim on the basis that the evidence was insufficient to establish that a condition was diagnosed in connection with the claimed employment factor.

In a letter dated May 2, 2001, appellant's counsel requested a hearing before an Office hearing representative. A hearing was held on October 25, 2001 at which appellant provided testimony and submitted medical evidence.

In a February 2, 2001 report, Dr. Louis M. Jacobs, an attending physician, reported that appellant had a history of heavy labor at work and that his back started to hurt. He diagnosed low back syndrome and noted that when appellant "does heavy work he increases his muscle spasms." In a March 20, 2001 report, Dr. Jacobs noted appellant's employment history and that when appellant performed his employment duties "he felt a sensation in his lower back." Appellant notified his supervisor and was told to continue work. He subsequently was unable to move due to the pain in his back. A physical examination revealed restriction of motion in his back and that appellant had been diagnosed with sciatica.

In a report dated May 14, 2001, Dr. Douglas W. Laske, a treating Board-certified neurological surgeon, diagnosed "severe low back pain and left lower radicular symptoms after heavy lifting at work in December 2000."

Appellant subsequently submitted a copy of an emergency room treatment report dated December 27, 2000, which diagnosed sciatica.

In a November 9, 2001 report, Dr. Jacobs opined that, due to "the sequelae of the accident at work, it would seem, with a reasonable degree of medical certainty, that he will be incapacitated for an indefinite period of time."

In a decision dated January 23, 2002, the Office hearing representative vacated the April 10, 2001 decision and remanded the case for further development. The hearing representative found that the medical evidence of record was sufficient to warrant further development by the Office. The hearing representative instructed the Office to refer appellant for a second opinion evaluation to obtain a definitive diagnosis and a comprehensive opinion on the relationship between any diagnosed conditions and the accepted work factors.

In a report dated February 28, 2002, Dr. Anthony W. Salem, a referral Board-certified orthopedic surgeon, diagnosed long-standing degenerative arthritis in the lumbosacral spine with foramina stenosis. He concluded that an incident which involved appellant dropping a sack at work did not cause his back condition. Dr. Salem stated that appellant "demonstrates no acute changes from this alleged injury" and is not "suffering from anything at this time." With regard to the extent and duration of any disability, he opined that appellant should have been disabled for one to two months. As to the question of surgery, Dr. Salem opined that it was not indicated at this time. He concluded that appellant was not disabled from a neurological point of view and "did not suffer any objective damage or changes in his lumbosacral spine from his alleged work injury."

On May 1, 2002 the Office requested a supplemental report from Dr. Salem. The Office noted that he based his opinion on appellant's description of how the injury occurred instead of

on the statement of accepted facts. The Office enclosed a copy of the statement of accepted facts and a list of questions and requested Dr. Salem to provide a supplemental medical opinion.

In a supplemental report dated May 14, 2002, Dr. Salem stated that he had reviewed the statement of accepted facts regarding the employment history. He concluded:

“I feel that there is no specific injury. [Appellant] was just doing his normal job. There was also no ‘new injury’, in that there were no objective changes in his back or his body. The diagnosed condition and the work factors are related only in the fact that the more anybody works, the sorer their back may become. However, that should not have lasted for more than an hour or two. The only disability from that diagnosed condition is in his mind. The patient was not disabled by this stress. There is no need for surgery. As I stated in my previous report, the patient is totally deconditioned and is not motivated and he can and should go back to his job.”

By decision dated May 23, 2002, the Office denied appellant’s claim on the basis that the medical evidence failed to establish that he sustained a condition causally related to his federal employment.

In a letter dated May 29, 2002, appellant’s counsel requested a hearing before an Office hearing representative. A hearing was held on July 29, 2003 at which appellant was represented by counsel and provided testimony.

By decision dated October 14, 2003, the hearing representative found the medical evidence of record insufficient to establish that appellant’s back condition had been caused or aggravated by his federal employment. The hearing representative affirmed the May 23, 2002 decision denying the claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing that the essential elements of his 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.<sup>1</sup> These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

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

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<sup>1</sup> *Derrick C. Miller*, 54 ECAB \_\_\_\_ (Docket No. 02-140, issued December 23, 2002).

<sup>2</sup> *Janice Guillemette*, 54 ECAB \_\_\_\_ (Docket No. 03-1124, issued August 25, 2003); *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

presence or existence of the disease or condition for which compensation is claimed;<sup>3</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>4</sup> 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>5</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>6</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

In his February 28, 2002 report, Dr. Salem diagnosed long-standing degenerative arthritis in the lumbosacral spine with foramina stenosis and concluded that the incident which involved dropping a sack at work did not cause appellant's condition. The physician concluded that appellant "demonstrates no acute changes from this alleged injury" and is not "suffering from anything at this time." With regard to the extent and duration of disability, he opined that appellant should have been disabled for one to two months. Dr. Salem opined that appellant has no disability from a neurological point of view and "did not suffer any objective damage or changes in his lumbosacral spine from his alleged work injury." In a supplemental report dated May 14, 2002, Dr. Salem concluded that appellant did not sustain any specific injury as "he was just doing his normal job." With regard to whether his back condition was employment related,

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB \_\_\_\_ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB (2001).

<sup>5</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *Luis M. Villanueva*, 54 ECAB \_\_\_\_ (Docket No. 03-977, issued July 1, 2003).

<sup>7</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>8</sup> *Tomas Martinez*, 54 ECAB \_\_\_\_ (Docket No. 03-396, issued June 16, 2003).

<sup>9</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB \_\_\_\_ (Docket No. 03-565, issued July 9, 2003).

the physician stated the only relationship is one where “the more anybody works, the sorer their back may become” and then concluded any soreness would have lasted for one to two hours.

The Board finds that Dr. Salem’s February 28, 2002 report and May 14, 2002 supplemental report are not sufficient to resolve whether appellant’s federal employment duties caused or aggravated his back condition. He diagnosed long-standing degenerative arthritis in the lumbosacral spine with foramina and concluded that the condition was unrelated to appellant’s dropping a sack of mail. The Office requested clarification from Dr. Salem, advising that appellant attributed his condition to his employment duties over the years and not to one specific incident. In a supplemental report dated May 14, 2002, Dr. Salem concluded that appellant’s condition was not caused by his employment duties. He stated that there was no new injury and there was “no specific injury.” However, he also stated that the diagnosed condition and work factors were related to the fact that “the more anybody works, the sorer their back may become.” This report is vague on the issue of causal relationship and does not resolve the issue on appeal. Although the Office sought clarification from Dr. Salem as to whether appellant’s condition was caused or aggravated by his employment duties, he did not provide a rationalized medical opinion explaining causal relationship.

Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts and referral to an appropriate medical specialist, to determine whether appellant’s back condition was caused or aggravated by the performance of his employment duties. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant’s claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision on the issue of whether appellant’s back condition is causally related to factors of his employment and the case is remanded for further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated October 14, 2003 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: July 21, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member