



Appellant returned to a limited-duty position and subsequently submitted claims for compensation (Form CA-7) for temporary total disability during the period December 4, 2002 through February 3, 2003. He returned to limited duty on February 4, 2003 and accepted a modified job offer on February 6, 2003.

Of record are several reports from Dr. Susan M. Butler-Sumner, a family practitioner and appellant's treating physician. She indicated that appellant had degenerative disc disease low back findings and low back syndrome. No opinion was rendered supporting that the employment caused or aggravated the diagnosed condition. In her January 3, 2003 attending physician's report, Dr. Butler-Sumner answered "unknown" in response to the question of whether appellant's diagnosed condition was caused or aggravated by employment activity.

In a letter dated January 22, 2003, the Office advised appellant that medical evidence establishing disability for work during the claimed period was required. Appellant was requested to submit a reasoned medical opinion from his physician explaining how and why the lumbar strain had not resolved and caused disability for the period claimed. Appellant did not submit any new medical evidence.

By decision dated April 4, 2003, the Office denied appellant's claim on the basis that the medical evidence of record did not establish that a lumbar strain which originated from the October 20, 2000 work injury was still present. Thus, the Office found that all work-related disability had resolved on and after April 4, 2003.

In an April 28, 2003 letter, appellant requested a hearing before an Office representative, which was held November 13, 2003. Pharmacy bills and travel vouchers were submitted. In reports dated February 4 and April 15, 2003, Dr. Butler-Sumner advised that appellant had been a patient for about a year and that he had sustained a lumbar strain as a result of the impact and trauma sustained in the October 20, 2000 motor vehicle collision. She opined that the October 20, 2000 work-related injury had aggravated and exacerbated appellant's degenerative disc disease and disc problems concerning the bulging disc in his lower back and that he was permanently disabled as a result of the October 20, 2000 work injury. In an August 18, 2003 report, Dr. Butler-Sumner opined that appellant's low back syndrome was work related and that maximum medical improvement was reached six months prior.

Also submitted were copies of medical reports from Dr. Allan Purdie, a Board-certified family practitioner, Dr. Carl J. Herring, a Board-certified neurological surgeon and Dr. Shereef Girgis, a Board-certified internist, along with objective studies previously of record and contemporaneous to the October 20, 2000 work injury. The October 20, 2000 and March 2, 2001 x-rays of the lumbar spine revealed mild degenerative disease at L3-4 and L4-5 and mild facetar osteoarthric changes at L5-S1 and a November 1, 2000 magnetic resonance imaging (MRI) scan report revealed minimal diffuse bulging at L3-4 and minimal right paracentral focal bulge at L4-5. In an October 20, 2000 report, Dr. Purdie opined that appellant had a lumbar strain as a result of the work incident. In his reports of October 26, November 2 and 21 and December 5, 2000, Dr. Purdie diagnosed degenerative disc disease and lumbar strain with mild disc bulging. No opinion, however, was rendered on the cause of these conditions.

In a November 7, 2000 report, Dr. Herring opined that the MRI scan findings revealed very minor disc bulging which were not clinically significant. He concluded that the work-related motor vehicle accident caused a lumbar strain.

In February, March, April, July and October 2001 reports, Dr. Girgis opined that appellant had a mild bulge at L3-4, mild lumbar disc disease and a paracentral bulge at L4-5 with evidence of facet arthritis and confirmed that the x-rays revealed only mild degenerative changes. He opined that appellant was unable to return to work on a full-time basis and recommended that appellant continue with physical therapy and medication. In a January 10, 2002 report, Dr. Girgis diagnosed lumbar spondylosis, degenerative disc disease and facet arthropathy. He further stated that appellant was able to maintain his status at the employing establishment and continue his current level of activity.

By decision dated March 15, 2004, the Office hearing representative affirmed the April 4, 2003 decision, on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed disability and residuals of the October 20, 2000 employment injury.

In letters dated June 11 and July 21, 2004, appellant requested reconsideration. In a June 14, 2004 report, Dr. Butler-Sumner opined that appellant's current medical condition was directly related to the trauma sustained from the rear end impact of the October 20, 2000 employment injury. Dr. Butler-Sumner stated that, although appellant's disc disease may have predated the October 20, 2000 employment injury, the degenerative condition did not adversely affect the L4-S1 until the trauma aggravated the discs, which caused an austioarthritic change at L4-S1 due to the weakened anatomy caused by the trauma of the collision and which was further aggravated and exacerbated by appellant's repetitious movements of getting into and out of his work vehicle and lifting mailbags in conjunction with his body movements. Dr. Butler-Sumner opined that the austioarthritic changes would not have occurred at L5-S1 but for the rear-end collision and other damage sustained to the lumbar region of appellant's anatomy. She further opined that appellant's employment duties impacted his body in the lumbar region and impacted his disability. Duty status reports from Dr. Butler-Sumner, diagnosing degenerative disc disease due to the injury were also submitted.

In a July 5, 2004 report, Dr. Girgis advised that appellant came under his care in December 2000. He stated that appellant had an underlying facet arthritis which was age related and, when he was injured, it set up a process of inflammation and pain associated to trauma to joints, which were already in the process of degenerating. On account of this, appellant required continued therapy and medications. As a treatment option, Dr. Girgis recommended that appellant undergo radiofrequency ablation of the medial branch nerves to those joints.

By decision dated September 8, 2004, the Office denied modification of the March 15, 2004 decision.

### **LEGAL PRECEDENT**

For any period of disability claimed, a claimant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for

work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.<sup>1</sup> A physician's opinion on disability must be supported by sound medical reasoning.<sup>2</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>3</sup>

A claimant has the burden of proof to show that medical expenses were incurred for treatment of the effects of an employment-related condition and this burden includes the necessity to submit supporting rationalized medical evidence.<sup>4</sup>

### ANALYSIS

The evidence establishes that appellant sustained a traumatic injury to his back on October 20, 2000 for which the Office accepted a back strain and paid all appropriate periods of temporary total disability and wage loss. The evidence also establishes that appellant returned to work in a limited-duty position. Appellant has the burden of proving that his disability for work and medical expenses incurred during the claimed period of December 4, 2002 through February 3, 2003, were related to the October 20, 2000 employment injury. The Board finds that this burden has not been met.

Appellant submitted reports from his initial attending physician, Dr. Purdie. However, these reports are not relevant as they predate the period of claimed disability. Similarly, many of Dr. Girgis' reports also predate the claimed period of disability commencing December 4, 2002. In a July 5, 2004 report, Dr. Girgis advised that appellant had an underlying facet arthritis, which was age related and noted that the October 20, 2000 injury set up a process of inflammation and pain associated with trauma to joints which were already in the process of degenerating and which required continued therapy and medications. Although Dr. Girgis asserted that the October 20, 2000 injury may have aggravated and/or exacerbated appellant's preexisting conditions, this does not obviate the need for a rationalized medical opinion that his disability for work and medical treatment from December 4, 2002 to February 3, 2003 was causally related to the employment injury.<sup>5</sup> The Board notes that the Office accepted the condition of low back strain and Dr. Girgis' opinion is insufficiently rationalized to establish that any other condition is

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<sup>1</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001); *David H. Goss*, 32 ECAB 24 (1980).

<sup>2</sup> *See Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>3</sup> *See Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>4</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996).

<sup>5</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation. *William A. Archer*, 55 ECAB \_\_\_\_ (Docket No. 04-1138, issued August 27, 2004).

employment related.<sup>6</sup> Dr. Girgis did not address the specific period of disability at issue nor did he provide further medical reasoning to explain how any disability for this period was due to the employment injury instead of appellant's preexisting condition.

In several reports, Dr. Butler-Sumner opined that appellant's current medical conditions were directly related to the October 20, 2000 work injury as the degenerative disc disease and bulging disc were aggravated and exacerbated by the work-related incident. In a June 14, 2004 report, Dr. Butler-Sumner explained that the trauma appellant sustained from the rear end impact of the October 20, 2000 work injury had caused an austioarthritic change at L4-S1 due to weakened anatomy which was further aggravated by appellant's employment duties which affected the lumbar region of his body and resulted in disability. Although Dr. Butler-Sumner opined in her February 4, 2003 report, that appellant was permanently disabled as a result of the October 20, 2000 work injury, the physician provided no rationalized or reasoned medical opinion concerning the period December 3, 2002 to February 3, 2003 nor gave any indication that she knew what appellant's limited-duty work comprised of or whether she knew that he worked in such position prior to and subsequent to the claimed period of disability.<sup>7</sup> Dr. Butler-Sumner also did not address an apparent inconsistency in her opinion on causal relationship as exemplified in her January 3, 2003 report, in which she responded "unknown" to the question of whether appellant's employment caused or aggravated his diagnosed condition. Her opinion does not relate appellant's disability for the period claimed to the condition accepted by the Office. Dr. Butler-Sumner's reports are of diminished probative value on the issue relevant to this appeal.

### CONCLUSION

Appellant has not met his burden of proof in establishing that disability from December 4, 2002 to February 3, 2003 is causally related to the accepted employment injury of October 20, 2000.

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<sup>6</sup> Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

<sup>7</sup> See *Ricky S. Storms*, *supra* note 3; see also *William A. Archer*, *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8 and March 15, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member