



In support of her claim, appellant submitted progress notes dated October 21, 2003 from Kathleen S. Dooner, a nurse practitioner and an October 21, 2003 x-ray interpretation by Dr. Nami R. Azar, a Board-certified diagnostic radiologist. Ms. Dooner related that appellant injured herself on October 7, 2003 and diagnosed a lumbar strain. Dr. Azar related that appellant strained her lower back muscles when grabbing a falling patient.

In a letter dated October 23, 2003, the employing establishment controverted the claim. The employing establishment related that appellant “did not make the connection between the October 7, 2003, (sic) incident and her back pain until after she saw her physician” and that appellant informed her physician that her injury did not occur at work

In a letter dated October 28, 2003, the Office informed appellant that the evidence of record was insufficient to support her claim and advised her as to the type of medical and factual evidence required to support her claim.

In a decision dated December 5, 2003, the Office denied the claim on the grounds that the medical evidence failed to establish that her back condition was causally related to the October 7, 2003 employment incident.

On January 5, 2004 appellant requested an oral hearing, which was held on June 22, 2004. Appellant was represented by counsel and provided testimony.

She submitted a December 1, 2003 report from Dr. Audley M. Mackel, III, a treating Board-certified orthopedic surgeon. Dr. Mackel diagnosed lumbar strain and sprain. He reported that appellant sustained an injury on October 7, 2003 when she attempted to prevent a patient from falling and that she did not initially note any pain. However, within 24 hours, appellant noted acute pain in her lower back. Physical findings revealed “tenderness along the paraspinal muscles of the lower back, primarily on the left side,” intact neurovascular status, 10 to 15 degrees of side bending, 80 degrees of flexion, 10 degrees of extension and 20 degrees of rotation.

In an October 9, 2003 report, Dr. Mackel diagnosed lumbar strain and sprain. He reported seeing appellant on October 7, 2003 due to her complaints of an injury sustained on October 7, 2003 when she attempted to prevent a patient from falling. Physical findings revealed “tenderness along the paraspinal muscles about the lower back,” intact lower extremity neurovascular status, “[t]enderness is present with deep digital palpation,” 10 to 15 degrees of side bending, 40 to 50 degrees of flexion and 10 degrees of extension.

In a January 22, 2004 report, Dr. Mackel related that appellant continued to have complaints of lower back pain. He stated that appellant’s injury was sustained on October 7, 2003 when she was lifting a patient. He diagnosed lumbar sprain and strain. Physical findings revealed “tenderness along the paraspinal muscles about the lower back,” intact neurovascular status, 10 to 15 degrees of side bending, 70 to 80 degrees of flexion, 10 degrees of extension and 20 degrees of rotation.

In an August 26, 2004 decision, the Office hearing representative affirmed the December 5, 2003 denial of appellant’s claim. The Office hearing representative found the medical evidence insufficient to establish that her lumbar strain was causally related to the

October 7, 2003 incident. As the opinion of Dr. Mackel was unrationalized and not based upon an accurate history of the employment incident.

### **LEGAL PRECEDENT**

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>1</sup> The second component is whether the employment incident caused a personal injury.<sup>2</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>3</sup>

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>4</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>6</sup>

### **ANALYSIS**

The Office found that appellant experienced the October 7, 2003 employment incident at the time, place and in the manner alleged. However, it denied the claim finding insufficient medical evidence relating the diagnosed lumbar strain to the October 7, 2003 employment incident. The Board finds that the evidence of record does not contain rationalized medical opinion evidence relating appellant’s condition to the October 7, 2003 employment incident.

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant’s specific employment factors. *Id.*

<sup>4</sup> *Bobbie F. Cowart*, 55 ECAB \_\_\_\_ (Docket No. 04-1416, issued September 30, 2004).

<sup>5</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

In his reports, Dr. Mackel failed to explain how appellant's diagnosed lumbar strain and sprain was causally related to her preventing a patient from falling on October 7, 2003. His history of injury contained in the January 22, 2004 report was different than that listed in prior reports. He stated that appellant injured herself when lifting a patient on October 7, 2003. He did not explain the inconsistent histories and did not explain how the mechanism of the incident affected appellant's back or whether the variance in the medical history significantly affected his opinion. Dr. Mackel provided no medical rationale addressing the basis for his stated conclusion on causal relationship. As Dr. Mackel's opinion is not supported by medical rationale, based on a complete and accurate history, explaining the nature of the relationship between the diagnosed condition and the accepted incident, it is of diminished probative value and is insufficient to establish causal relation.<sup>7</sup>

Dr. Azar's October 21, 2003 x-ray interpretation is also insufficient to support appellant's burden of proof. Dr. Azar opined that appellant strained her lower back muscles when grabbing a falling patient. However, he did not provide any supporting rationale explaining how the diagnosed condition was related to the accepted employment incident. Dr. Azar's report is of diminished probative medical value and insufficient to establish causal relationship.<sup>8</sup>

The October 21, 2003 progress notes from Ms. Dooner, a nurse practitioner, contain a diagnosis of lumbar sprain and noted that appellant injured herself on October 7, 2003. This report has no probative medical value as a nurse is not a "physician" as defined under the Federal Employees' Compensation Act.<sup>9</sup> Therefore, Ms. Dooner cannot render a competent medical opinion.

Appellant has failed to submit rationalized medical opinion explaining how her lumbar strain is causally related to the accepted October 7, 2003 incident she has not satisfied her burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that her back condition is causally related to the accepted October 7, 2003 employment incident.

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<sup>7</sup> See *Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8101(2) which defines "physician" as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; see also *Joseph N. Fassi*, 42 ECAB 231 (1991) (medical evidence signed only by a registered nurse or nurse practitioner is generally not probative evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 26, 2004 is affirmed.

Issued: March 9, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member