



L3-5 on July 28, 2004. Appellant noted that a back claim had previously been submitted and denied. She first became aware of her condition on August 23, 2001.

Dr. Christine Gentry, an osteopath, completed a report on April 13, 2004. She noted that appellant's claims for bilateral carpal tunnel syndrome, bilateral rotator cuff syndrome and shoulder impingement syndrome were accepted by the Office as due to employment activities. On examination, appellant had significant neck and lumbar symptomatology. Dr. Gentry stated, "It is my opinion that I believe that, with a reasonable degree of medical certainty, that [appellant's] cervical and lumbar pathology is again likely work related."

In a report dated June 1, 2004, Dr. Salim Rahman, a Board-certified neurosurgeon, noted that appellant's back symptomatology began in 1999 during work. He diagnosed lumbar radiculopathy and mechanical back pain. Dr. Rahman stated that appellant's symptoms began at work and that she performed significant manual, repetitive-type work. He concluded, "In my opinion, I believe with a reasonable degree of medical certainty that the patient's current lumbar problems are related to her work." On July 27, 2004 Dr. Rahman repeated his earlier findings and conclusions. He recommended posterior lumbar decompression with fusion at L3-4 and L4-5. Dr. Rahman performed arthrodesis, posterior lumbar interbody fusion, pedicle screw fixation and bilateral discectomy at L3-4 and L4-5 on July 28, 2004. On August 26, 2004 he opined that appellant's "repetitive push/pull type activity" at the employing establishment contributed to her problems in the neck and spine. Dr. Rahman stated, "I think there is a direct relationship and that the pathology present in the lumbar spine is work related."

Appellant submitted treatment notes from Dr. Rodney Witt, a chiropractor, dated August 23 to 31, 2001. There is neither diagnosis of subluxation nor mention of x-rays in the notes.<sup>1</sup>

Dr. William D. Richardson completed a report on June 21, 2004 and opined that appellant was totally disabled. He did not address the causal relationship between her back condition and her employment.

By letter dated December 30, 2004, the Office requested additional factual and medical evidence from appellant and allowed 30 days for a response. Appellant responded on January 21, 2005 and requested an extension of time. She submitted notes from Dr. Thomas P. Pirotte dated January 13 and 17, 2005. Dr. Pirotte discussed appellant's symptoms throughout her body. He did not offer an opinion as to whether any of appellant's symptoms were due to her employment.

Dr. Christine McGinnis, an osteopath, examined appellant on January 28, 2003 and noted her symptoms of chronic neck and back pain with radiation down into the right hip, knee and leg.

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<sup>1</sup> Section 8101(2) of the Federal Employees' Compensation Act provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). As Dr. Witt has not diagnosed a subluxation as demonstrated by x-ray, he is not a physician for the purpose of the Act and his report is of limited probative value. *Mary A. Ceglia*, 55 ECAB 626, 630 (2004).

She stated that she suspected lumbar radiculopathy. Dr. McGinnis did not provide an opinion regarding the origin of this condition.

Appellant submitted additional chiropractic treatment notes dated September 5 to 14, 2001. There is no diagnosis of subluxation of the spine through x-rays.

On February 14, 2003 Dr. Todd J. Harbach, an orthopedic surgeon, completed a report diagnosing bilateral shoulder impingement syndrome, chronic cervical pain, cervical spondylosis, multilevel cervical degenerative disc disease, low back pain, lumbar spondylosis, fibromyalgia, and a history of recurrent carpal tunnel syndrome. He stated, "It is my opinion that the activities of bending, lifting, twisting and handling of mail and other packages are 100 percent directly related to her subjective complaints and are supported by objective findings on physical exam[ination] and diagnostic studies."

Dr. Rahman completed a report on January 13, 2005 and diagnosed cervical spondylosis and lumbar stenosis. He stated that appellant had worked for many years performing repetitive pushing, pulling and lifting at the employing establishment. Dr. Rahman stated, "I concur that there is a direct relationship between the prolonged repetitive work she has done at the [employing establishment] and the degenerative pathology of her cervical and lumbar spine."

The employing establishment submitted an investigative memorandum dated February 4, 2005 detailing appellant's activities from January 14 through 22, 2005.

By decision dated March 10, 2005, the Office denied appellant's claim, finding that the medical evidence was not sufficiently rationalized to establish causal relationship.

Appellant requested a review of the written record on March 29, 2005. By decision dated September 19, 2005, the hearing representative noted that the Office accepted as factual that appellant was required to engage in repetitious heavy lifting, pushing and pulling. However, the hearing representative found that the medical evidence was not sufficiently detailed and rationalized to meet appellant's burden of proof.

Appellant submitted a magnetic resonance imaging (MRI) scan dated June 8, 2004 which demonstrated moderately severe circumferential spinal stenosis at L4-5 with mild stenosis at L3-4 due to a very mild broad-based disc bulge and severe facet arthropathy. At L4-5 there was a slight anterior subluxation of L4 relative to L5 due to severe facet osteoarthritis.

Dr. Rahman completed a report on November 10, 2005 and diagnosed right C6 radiculopathy. He recommended anterior cervical discectomy with fusion and plate fixation at C5-6. Dr. Rahman stated that appellant's employment duties including repetitive heavy lifting of over 70 pounds and pushing or pulling over 1,000 pounds. He noted:

"The patient prior to her work at the [employing establishment] did not have the above-mentioned complaints. As a result the patient has significant neck and lumbar pathology. She has undergone a lumbar fusion. As I have said before, to the best of my opinion I believe with the degree of medical certainty that [appellant's] cervical and lumbar pathology is directly related to the heavy work that she has performed for the [employing establishment]."

Appellant requested reconsideration through her attorney on April 14, 2006 and submitted a report from Dr. Rahman dated March 28, 2006. Counsel argued that appellant had met her burden of proof and, if the evidence was not sufficient to meet her burden of proof, it was sufficient under *John J. Carlone*,<sup>2</sup> to require the Office to undertake further development of her claim.

The employing establishment responded on April 27, 2006 and noted that appellant experienced a motor vehicle accident in 1999. The employing establishment also noted that appellant was only required to lift up to 70 pounds on an occasional basis. The employing establishment stated that pushing or pulling a container weighing up to 2,400 pounds used only 40 pounds of force. It noted that appellant had performed limited duty since June 11, 2002.

Appellant submitted a statement dated June 24, 2005 describing the job duties which she felt caused or contributed to her back condition and surgeries. Her attorney submitted a job analysis of the position of mail handler on June 27, 2006. The employing establishment responded on June 26, 2006 and listed appellant's employment history.

By decision dated June 30, 2006, the Office reviewed appellant's claim on the merits and denied modification of its prior decisions. The Office found that appellant had not submitted sufficient medical opinion evidence based on a complete factual and medical background establishing causal relationship between her accepted employment duties and her diagnosed back condition.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>4</sup> 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</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 presence or existence of a the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the

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<sup>2</sup> 41 ECAB 354 (1989).

<sup>3</sup> Following the Office's June 30, 2006 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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. A physician's opinion on the issue of casual relationship must be based on a complete factual and medical background of the claimant.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

In support of her claim, appellant submitted reports from Drs. Richardson, Pirotte and McGinnis. However, these physicians did not address the causal relationship between her employment and her diagnosed back conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>8</sup> As these reports did not address the causal relationship between her work duties and her diagnosed condition, they are not sufficient to establish that her lumbar condition resulted from her employment duties.

Appellant has submitted several medical reports from physicians supporting a causal relationship between her accepted employment duties of heavy lifting, pushing and pulling and her diagnosed lumbar radiculopathy. Dr. Gentry, an osteopath, attributed appellant's lumbar symptomatology to her work. However, she did not describe the employment duties implicated and did not offer any medical reasoning explaining how appellant's work duties could have caused or contributed to her diagnosed condition. This report is not based on a proper factual background as it does not include a detailed description of the implicated employment duties. Therefore this report is not sufficient to meet appellant's burden of proof.

In a report dated February 14, 2003, Dr. Harbach diagnosed lumbar spondylosis and opined that appellant's employment duties of bending, lifting, twisting were directly related to the findings on examination.

Dr. Rahman, a Board-certified neurosurgeon, diagnosed lumbar radiculopathy on June 1 and July 27, 2004. He noted that appellant's symptoms began at work and that appellant's lumbar problems were related to her work. On August 26, 2004 Dr. Rahman identified appellant's work duties as "repetitive push/pull type activity" and again opined that appellant's lumbar spine condition was due to her work duties. In a report dated November 10, 2005, Dr. Rahman described appellant's employment duties of lifting over 70 pounds as well as pushing or pulling 1,000 pounds. He noted that appellant did not have any symptoms prior to her employment and opined that her lumbar pathology was due to her employment duties. Dr. Rahman completed a report on January 13, 2005 and diagnosed lumbar stenosis. He noted that appellant performed repetitive pushing, pulling and lifting at the employing establishment.

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<sup>6</sup> *Id.*

<sup>7</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>8</sup> *Conrad Hightower*, 55 ECAB 796, 800 (2003).

Dr. Rahman opined that there was a direct relationship between appellant's repetitive work duties and her degenerative lumbar spine condition.

The reports from Drs. Rahman and Harbach noted the employment activities of repetitive heavy lifting, pushing and pulling which resulted in her diagnosed lumbar conditions of lumbar stenosis, lumbar spondylosis, lumbar radiculopathy and resulting surgery. While these reports are not sufficient to meet appellant's burden of proof, the reports do raise an uncontroverted inference of causal relation between appellant's accepted employment duties and her diagnosed lumbar conditions and are sufficient to require the Office to undertake further development of appellant's claim.<sup>9</sup>

On remand the Office should develop a statement of accepted facts addressing the actual employment duties performed by appellant during the course of her employment and refer the statement of accepted facts and appellant to an appropriate physician to determine if her work duties caused or contributed to her diagnosed lumbar conditions and resulting surgery. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>9</sup> *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 30, 2006 and September 19, 2005 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision of the Board.

Issued: December 12, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board