



allegedly subjected to being jerked and bounced around, resulting in chest pain, dizziness and difficulty breathing.

In a report dated July 19, 1993, Dr. Jeffrey Prater, a Board-certified internist, stated that the employee had chronic back pain that he believed was related to the 1992 injury. His report reflected that a recent magnetic resonance imaging scan showed mild to moderate disc bulges at L4-5 and L5-S1. In a report of a second opinion examination dated January 14, 1994, Dr. Thomas Scott stated that the employee exhibited subjective complaints of radicular low back pain. He opined that the employee experienced degenerative changes in the lower lumbar spine and that his then present symptoms were not related to the June 1992 mine incident.

The employee's claim for compensation was denied on August 24, 1994.

The employee requested a hearing, and by decision dated February 6, 1995, the case was remanded for further development of the medical evidence and an impartial medical examination.

In a report dated May 28, 1998, Dr. Michael Studeny, a Board-certified internist, found that employee had significant limitations secondary to his back pathology but stated that a determination of the employee's precise limitations was outside the area of his expertise. The employee was also treated by Dr. Ballard Wright, a Board-certified anesthesiologist, who testified in a February 15, 1999 deposition that he believed that the employee's degenerative condition occurred throughout his lifetime as a coal miner. He stated, however, that the employee's back was not symptomatic prior to the June 18, 1992 injury and opined that the onset of his disability based solely on his back injury began on June 18, 1992.

By decision dated July 1, 1998, the Office denied compensation.

An oral hearing was held on March 11, 1999. By decision dated July 14, 2000, the Office hearing representative found that the weight of the medical evidence established that the employee's ongoing cardiac condition was not causally related to the accepted 1992 incident. He further found a conflict of medical opinion on the question of whether the employee's back condition was causally related to his 1992 work injury and remanded the case for an impartial medical evaluation to resolve the conflict.

The Office requested additional information from the employee in furtherance of the hearing representative's decision. By decision dated August 30, 2000, the Office found that the evidence of record did not establish a causal relationship between the 1992 work injury and the employee's back condition. On September 18, 2000 the employee, by his representative, requested reconsideration of the Office's August 30, 2000 decision.

The employee died on April 14, 2003 before an impartial medical examination could be conducted.

On September 10, 2004 the Office referred the case record, together with a statement of accepted facts, to Dr. Michael A. Grefer, a Board-certified orthopedic surgeon, for an impartial medical review and an opinion as to whether or not there existed a causal relationship between

the 1992 work injury and the employee's low back condition and disability from June 18, 1992 until his date of death.

In a report dated October 18, 2004, Dr. Grefer stated that he found no evidence that the employee had a back condition that prevented him from performing his job during the period of time at issue. Dr. Grefer indicated that he had reviewed the entire medical record. He discussed the history of the employee's condition and treatment as well as the requirements of his job. Dr. Grefer opined that it was unlikely that the employee's symptoms were caused by a significant traumatic event in June 1992 because his symptoms of back and leg pain were not reported until eight months after the accepted incident. He further opined that the employee had preexisting disc disease that was present in his back well before June 1992. In a work capacity evaluation dated October 19, 2004, Dr. Grefer indicated that, until the date of his death, the employee would have been able to perform the duties of his job with restrictions. He would have been limited to sitting for six hours; walking, standing, bending, stooping, squatting, kneeling, and climbing for one hour; and pushing, pulling and lifting for one to two hours.

By decision dated May 23, 2005, the Office denied the employee's claim, finding that the weight of the medical evidence did not support disability for work due to a work-related back condition and that the employee did not sustain a back condition as a result of the June 1992 work-related incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence.<sup>2</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>4</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his disability and entitlement to compensation.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Amelia S. Jefferson*, 57 ECAB \_\_\_\_ (Docket No. 04-568, issued October 26, 2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>3</sup> See *Amelia S. Jefferson*, *supra* note 2. See also *David H. Goss*, 32 ECAB 24 (1980).

<sup>4</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>5</sup> See *William A. Archer*, 55 ECAB \_\_\_\_ (Docket No. 04-1138, issued August 27, 2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>6</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. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty<sup>8</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>9</sup>

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>11</sup>

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>12</sup> Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.<sup>13</sup> Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>14</sup>

### ANALYSIS

The Office found a conflict in medical opinion on whether the employee's back condition was causally related to his 1992 work injury. The Office hearing representative remanded the

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<sup>6</sup> See *Viola Stanko, claiming as widow of Charles Stanko*, 56 ECAB \_\_\_\_ (Docket No. 05-53, issued April 12, 2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> 5 U.S.C. § 8123(a).

<sup>11</sup> See *Viola Stanko*, *supra* note 6; see also *Gloria E. Godfrey*, 52 ECAB 486 (2001).

<sup>12</sup> 20 C.F.R. § 10.5(f).

<sup>13</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

<sup>14</sup> *Fereidoon Kharabi*, *supra* note 5.

case to the Office for an impartial medical evaluation to resolve the conflict.<sup>15</sup> An impartial medical review of the record was conducted in lieu of an examination, due to the employee's death. Dr. Grefer, a Board-certified orthopedic surgeon, extensively reviewed the medical record and concluded that there was no evidence that the employee had a back condition that prevented him from performing the duties of his federal employment from June 18, 1992 until his death on April 14, 2003. Dr. Grefer opined that it was unlikely that the employee's symptoms were caused by a significant traumatic event in June 1992 because his symptoms of back and leg pain were not reported until eight months after the accepted incident. He noted that the employee was first treated for back pain on February 16, 1993 by Dr. Prather. Dr. Grefer also opined that the employee had preexisting disc disease that was present in his back well before June 1992. Having considered the requirements of employee's job, Dr. Grefer concluded that the employee would have been able to perform the duties of his job, provided that he would have been limited to sitting for six hours; walking, standing, bending, stooping, squatting, kneeling and climbing for one hour; and pushing, pulling and lifting for one to two hours.

The Board finds that Dr. Grefer's impartial medical opinion that the employee's back condition was not caused by factors of his employment is sufficiently probative, rationalized and based upon a proper factual background. For this reason, his opinion represents the weight of the medical evidence. The medical evidence submitted by the employee is insufficient to overcome the special weight accorded to the opinion of the impartial medical specialist. As the hearing representative found, the opinions of Drs. Prater and Wright were not well rationalized and were based primarily on the fact that the employee was asymptomatic prior to his 1992 injury. However, the Board has held that, when a physician concludes that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, the opinion is insufficient without supporting medical rationale to establish causal relationship.<sup>16</sup> Additionally, Dr. Wright's opinion that the employee's back condition was degenerative is inconsistent with the occurrence of a traumatic injury. Moreover, Dr. Prater gave no explanation as to why the employee's complaints of back pain did not surface until February 1993, eight months after the accepted employment incident. Accordingly, these opinions are of limited probative value. The Board will affirm the Office's May 23, 2005 decision denying compensation benefits.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's back condition was causally related to the accepted 1992 work-related injury. The Board further finds that the employee's claim for lost wages for the period June 18, 1992 through April 14, 2003 should be denied.

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<sup>15</sup> The Board notes that the only decision before the Board on this appeal is the Office's May 23, 2005 merit decision denying appellant's claim for wage-loss compensation on the grounds that the employee's back condition was not disabling and was not causally related to his 1992 work injury. Because more than one year elapsed between the issuance of the Office's July 14, 2000 decision and the date appellant filed her appeal, the Board lacks jurisdiction to review the July 14, 2000 decision, which held that the weight of the medical evidence established that appellant's ongoing cardiac condition was not causally related to the accepted 1992 incident. *See* 20 C.F.R. § 501.3(d)(2).

<sup>16</sup> *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 23, 2005 is affirmed.

Issued: January 4, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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