



employment.<sup>1</sup> By letter dated February 26, 2003, appellant indicated that her back condition, which she related to a March 3, 2001 employment injury, was caused by processing a heavy volume of mail, including packages of fruit, during the 2002 holiday season which required increased repetitive lifting, bending, walking, squatting and reaching overhead and driving forklifts and other equipment on uneven surfaces and ramps. She stopped work on February 7, 2003. Appellant returned to work on February 24, 2003 with physical restrictions of no lifting over 20 pounds and no standing for more than one hour without a break. On April 18, 2003 her restrictions were expanded to include no use of a forklift. Appellant stopped work again on March 22, 2004 and did not return to work.

By decision dated April 8, 2003, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a diagnosed medical condition causally related to her employment. In an October 31, 2003 decision, the Office affirmed the denial of appellant's claim but modified the April 8, 2003 decision to reflect that the evidence did not establish that her diagnosed back condition was causally related to her employment. By decision dated March 16, 2004, the Office affirmed the October 31, 2003 decision. By decision dated August 24, 2004, the Office denied modification of the March 16, 2004 decision. By decision dated December 9, 2004, the Office denied modification of its prior decisions.

In reports dated February 7 to June 18, 2003, Dr. Edward J. Lairson, an attending Board-certified physiatrist, indicated that appellant was experiencing low back pain radiating down her legs. He provided findings on physical examination and diagnosed a herniated disc with radiculopathy which resolved following a bilateral L4 epidural. Dr. Lairson indicated that appellant should avoid operating a forklift, lifting items over 20 pounds and standing for more than one hour at a time.

In a December 9, 2003 report, Dr. William D. Tobler, an attending Board-certified neurosurgeon, indicated that appellant had been experiencing right-sided lumbar radiculopathy for the past two to three years which had worsened. He provided findings on physical examination and noted that a magnetic resonance imaging (MRI) scan and computerized tomography (CT) scan revealed a right subligamentous disc protrusion at L4-5 and superimposed spinal stenosis. Dr. Tobler recommended surgery consisting of a unilateral L4-5 decompression and discectomy.

In a December 22, 2003 report, Dr. Marc P. Orlando, a Board-certified physiatrist and an associate of Dr. Lairson, noted that appellant reported a new back injury in January 2003.

In two reports dated April 1, 2004, Dr. Tobler diagnosed a herniated disc and indicated by checking "yes" that the condition was causally related to appellant's employment.

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<sup>1</sup> This is a combined case file which includes the files for a December 6, 1994 accepted lumbosacral strain with sciatica under Office File No. A9398173, an October 3, 1998 accepted lumber strain under File No. 090445297, a March 3, 2001 accepted condition of mild degenerative changes at L4-5 and a small right foraminal disc protrusion at L4-5 under File No. 092014031 and a claim for an injury in January 2003 under File No. 092029350. The master File No. is 090445297.

In a report dated May 18, 2004, Dr. Tobler diagnosed right side lumbar radiculopathy and a disc protrusion at L4-5 and opined that these conditions were caused by appellant's employment and necessitated surgery.

In a September 21, 2004 report, Dr. Tobler indicated that he saw appellant for a one-time consultation on December 9, 2003. He stated:

"In [appellant's] particular case, I would equate the diagnosis of protrusion and disc herniation as being one and the same. Both of those are abnormal discs capable of causing nerve root compression syndrome and symptoms which she clearly has.

"[B]ased on the history provided to me and documented in my chart, [appellant] indicates that the heavy repetitive lifting and bending of parcel packages, fairly heavy during the holiday season, caused most of her pain. I have no other opinion that I can relate other than to reiterate what [appellant] states which is her symptoms were precipitated by the heavy lifting of the holiday season for which I have recommended surgical intervention."

In a June 23, 2005 report, Dr. Tobler stated:

"In my opinion [appellant's] use of a forklift in the manner that she describes during the holiday season intensified an underlying condition which led to her eventually [being] off work and undergoing surgical intervention. I would note that I first saw [appellant] on December 9, 2003, almost one year later.

"Objective findings were present on the CT myelogram which disclosed a right-sided disc protrusion with a root filling defect, *i.e.*, a pinched nerve at the L4-5 level that was responsible, in my judgment, for her symptoms. In my judgment, an intensified period of repetitive lifting, bending, loading, unloading, driving a forklift on a hard uneven surface, all of this jarring, bending activity is quite compatible with a history that she finds and furthermore it is quite compatible with objective findings on her myelogram and CT scan which, in my judgment, with a history explains that her surgery and condition exacerbated during Christmas season of 2002 did, in fact, aggravate an underlying medical condition and there is a direct causal relationship in this manner."

In its most recent decision dated December 8, 2005, the Office denied modification of its December 9, 2004 decision.

### **LEGAL PRECEDENT**

To establish a causal relationship between a claimant's condition and her employment, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's condition and the implicated employment factors. 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>2</sup>

### ANALYSIS

In reports dated February 7 to June 18, 2003, Dr. Lairson provided findings on physical examination and diagnosed a herniated disc with radiculopathy which resolved following a bilateral L4 epidural. He did not opine that appellant's condition was causally related to factors of her employment in December 2002. Therefore, his reports are not sufficient to establish that she sustained a work-related back condition in January 2003.

In a December 9, 2003 report, Dr. Tobler indicated that appellant had been experiencing right-sided lumbar radiculopathy for two to three years. He provided findings on physical examination and noted that MRI and CT scans revealed a right subligamentous disc protrusion at L4-5 and superimposed spinal stenosis. Dr. Tobler recommended surgery consisting of a unilateral L4-5 decompression and discectomy. However, the given date of onset for appellant's conditions in Dr. Tobler's report, two to three years previously which would be 2000 or 2001, precedes her January 23, 2003 claim for a back injury. Further, Dr. Tobler did not explain how these conditions were causally related to appellant's job duties during the holiday season in December 2002. Therefore, this report is not sufficient to establish a January 2003 employment injury. On April 1, 2004 Dr. Tobler diagnosed a herniated disc and indicated by checking "yes" that the condition was causally related to appellant's employment. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form report is of diminished probative value.<sup>3</sup> Therefore, this April 1, 2004 report is not sufficient to discharge appellant's burden of proof. In reports dated September 21, 2004 and June 23, 2005, Dr. Tobler stated that appellant's herniated disc at L4-5 was precipitated by repetitive lifting, bending, loading and unloading, and driving a forklift during the holiday season in 2002. However, Dr. Tobler's reports lack sufficient medical detail explaining how her herniated disc caused or aggravated the duties she was performing during the 2002 holiday season and not to any other factors such as a continuation of her March 3, 2001 employment-related disc problem at L4-5 or underlying degenerative changes at the L4-5 level. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are generally insufficient to meet an employee's burden of proof.<sup>4</sup>

Appellant failed to provide sufficient rationalized medical evidence establishing that her back condition in January 2003 was caused or aggravated by her work duties during the holiday season in 2002. Accordingly, the Office properly denied her claim for a new work-related back condition.

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>3</sup> *See Gary J. Watling*, *supra* note 2.

<sup>4</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

**CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury in January 2003 causally related to factors of her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 8, 2005 is affirmed.

Issued: July 6, 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