



In support of his claim appellant submitted a June 28, 2005 statement, a workers' compensation form by Dr. Eric C. Chamberlin, a treating Board-certified orthopedic surgeon, a June 23, 2005 certification of health care provider<sup>1</sup> and a May 17, 2005 note that he received medical treatment by Dr. Martin L. Novak, a chiropractor. Appellant noted that he experienced severe pain after picking up mail on June 9, 2005 and that a magnetic resonance imaging (MRI) scan showed a bulging disc on his sciatic nerve and a ruptured disc. Dr. Chamberlin saw appellant on June 27, 2005, diagnosed a strain/ herniated nucleus pulposus (HNP) and indicated that he was disabled for work. The certification report included a diagnosis of severe acute low back pain with discogenic disease with June 10, 2005 listed as the "approximate date the condition commenced."

In a letter dated July 18, 2005, the Office advised appellant that it required additional medical evidence to determine whether he sustained an injury in the performance of duty. The Office asked him to submit a comprehensive medical report from a physician explaining how his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a July 5, 2005 report, Dr. Chamberlin diagnosed a large extruded disc at L4-5, spinal stenosis and lumbar radiculopathy. He indicated that appellant was not able to return to work for four weeks.

On August 9, 2005 appellant filed a claim for wage-loss compensation for the period July 25 to August 5, 2005.

On August 17, 2005 the Office received reports dated June 27 and July 11, 2005, a June 27, 2005 disability certificate and an August 8, 2005 workers' compensation report by Dr. Chamberlin; an August 10, 2005 statement by appellant; progress notes dated June 6, 2005 by Dr. Rudolph A. Antoncic, a treating Board-certified internist; an August 9, 2005 letter from Lora Ward Wilson, Executive Director, Pittsburgh Bone and Joint Surgeons, P.C.; a June 16, 2005 report and June 17, 2005 disability certificate by Dr. George S. Kappakas, a treating Board-certified orthopedic surgeon; a June 9, 2005 lumbar MRI scan; chiropractic office notes for May 19, 20, 23, 26, 27 and 31, June 1, 3, 14, 15 and 17, 2005 by Dr. Novak, a treating physician; progress notes dated June 23, 2005 by Robert Harrison, a physician's assistant; and a report by Pittsburgh Bone and Joint Surgeons, P.C. detailing appellant's treatment/visits for the period August 29, 2001 to August 10, 2005.

Dr. Novak diagnosed "sciatic neuralgia with associated lumbar neuritis and radiculitis which was complicated by myofascial pain syndrome," spinal stenosis, lumbar disc herniation and "cervicalgia with associated cervical disc placement." On May 17, 2005 Dr. Novak diagnosed subluxations at C2-7, based on x-rays of the cervical and lumbar areas.

Dr. Kappakas diagnosed lumbar radiculopathy with extruded disc fragment. He reported that appellant "apparently had onset of this pain when he was working and doing some lifting" and that the pain was pretty severe. A physical examination showed tenderness at the LS spine

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<sup>1</sup> The signature of the physician is illegible.

with “moderate paravertebral spasm.” A review of an MRI scan revealed “a fairly large extruded disc at L5-S1 on the right side affecting the S1 nerve root.

In treatment notes dated June 23, 2005, Mr. Harrison diagnosed radicular back pain secondary to discogenic disease and hypertension.

In a June 27, 2005 report, Dr. Chamberlin stated that several weeks previously appellant’s back “‘went out’ at work.” A review of an x-ray revealed L4-5 spondylolisthesis and an MRI scan showed “severe stenosis at L4-5 and a right sided L5-S1 disc herniation.” On July 11, 2005 Dr. Chamberlin diagnosed critical and severe L4-5 stenosis “with evidence of fluid in the facet suggesting spondylolisthesis” based upon a review of an MRI scan.

In an August 9, 2006 letter, Ms. Wilson noted that appellant was being treated by Dr. Chamberlin and stated his diagnoses as shown by a June 9, 2005 MRI scan included:

“Severe and critical L4-5 lumbar spinal stenosis (724.02) with evidence of fluid in the facet suggesting spondylolisthesis (756.12).

“Very large right-sided paracentral disc herniation at L5-S1 (722.10).”

Ms. Wilson concluded that appellant’s “condition was caused by repeated lifting, pushing and pulling of equipment for 24 years.”

By decision dated August 18, 2005, the Office denied appellant’s claim on the grounds that he failed to establish that the diagnosed conditions were causally related to the June 9, 2005, incident of lifting mail.

By letter dated September 1, 2005, appellant requested reconsideration and submitted an August 9, 2005 letter by Ms. Wilson; physical therapy notes dated August 5, 2005, which noted June 6, 2005 as the date of exacerbation/onset; June 9, 2005 modified job offer; and August 19, 2005 progress notes and treatment notes for the period August 1 to 26, 2005 by Aaron Lazel, physical therapist, which noted that appellant was improving and noted a diagnosis of low back pain, in support of his request.

On October 5, 2005 the Office received reports dated June 27, July 11, August 8 and 22, 2005 by Dr. Chamberlin and a June 16, 2005 report by Dr. Kappakas. Dr. Chamberlin noted that appellant had “ongoing difficulties of pain in [the] right greater than left leg and his low back.” He diagnosed severe L4-5 spinal stenosis, right sided disc herniation at L5-S1 and spondylolisthesis.

By decision dated October 26, 2005, the Office denied modification of the August 18, 2005 decision.

In a December 1, 2005 letter, appellant requested reconsideration and submitted an August 9, 2005 letter by Ms. Wilson, a November 22, 2005 report by Dr. Chamberlin, who noted June 27, 2005 as the date he first saw appellant and that he related that he injured his back at work several weeks previously. He diagnosed L4-5 severe stenosis and L5-S1 right-sided herniated disc based upon a review of an MRI scan, which he found “consistent with appellant’s

history that he gives of having had his back ‘go out’ at work.” As to the spondylolisthesis at L4-5, Dr. Chamberlin opined that this was a chronic condition but the L5-S1 right sided herniated disc was “as per his history likely to have occurred when he injured himself at work.” The exact date the incident occurred was unknown, but Dr. Chamberlin stated that, based on his notes “it happened several weeks prior to seeing us in the office.”

By decision dated December 19, 2005, the Office denied modification of the October 26, 2005 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>5</sup> An award of compensation may not be based on a claimant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>6</sup>

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<sup>2</sup> *Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> *See Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>7</sup>

### ANALYSIS

There is no dispute that the lifting incident occurred on June 9, 2005 as alleged. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish a causal relationship between his diagnosed medical condition and the June 9, 2005 employment incident.

In a June 27, 2005 form, Dr. Chamberlin diagnosed strain/HNP. He diagnosed a L4-5 spondylolisthesis, right-sided disc herniation at L4-5 and L4-5 severe stenosis and noted that appellant's back "went out" at work several weeks prior. On July 5, 2005 Dr. Chamberlin diagnosed L4-5 large extruded disc, lumbar radiculopathy and spinal stenosis and on August 8, 2005, noted that appellant had "ongoing difficulties of pain in right greater than left leg and his low back." In both the August 8 and 22, 2005 reports, he diagnosed severe L4-5 spinal stenosis, right-sided disc herniation at L5-S1 and spondylolisthesis. In a November 22, 2005 report, Dr. Chamberlin noted that he first saw appellant on June 27, 2005 and he related that he injured his back at work several weeks previously. He diagnosed L4-5 severe stenosis and L5-S1 right-sided herniated disc based upon a review of an MRI scan, which he found "consistent with appellant's history that he gives of having had his back 'go out' at work." As to the spondylolisthesis at L4-5, Dr. Chamberlin opined that this was a chronic condition but the L5-S1 right-sided herniated disc was "as per his history likely to have occurred when appellant injured himself at work." The exact date the incident occurred was unknown, but he stated that based on his notes "it happened several weeks prior to seeing us in the office." While Dr. Chamberlin concluded that appellant's back condition was employment related, none of his reports provide a history of the June 9, 2005 incident. In a November 22, 2005 report, he stated that the date of the incident was unknown. As Dr. Chamberlin's opinion is based upon an incomplete history, his opinion is of diminished probative value.<sup>8</sup> Dr. Chamberlin merely provided a conclusion that appellant's condition was caused by his work without any supporting rationale.<sup>9</sup> He did not explain how the mechanism of lifting mail at work on June 9, 2005 caused or contributed to appellant's diagnosed back conditions. The Board finds that the reports of Dr. Chamberlin are not sufficient to establish the claim.

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<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *Cecelia M. Corley*, 56 ECAB \_\_\_\_ (Docket No. 05-324, issued August 16, 2005).

<sup>9</sup> *Beverly A. Spencer*, 55 ECAB \_\_\_\_ (Docket No. 03-2033, issued May 3, 2004). (A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is insufficient to meet the claimant's burden of proof.)

In his chiropractic treatment notes, Dr. Novak diagnosed “sciatic neuralgia with associated lumbar neuritis and radiculitis which is complicated by myofascial pain syndrome,” spinal stenosis, lumbar disc herniation and cervicgia with associated cervical disc placement. On May 17, 2005 he diagnosed subluxations at C2-7 by use of an x-ray. Dr. Novak is, therefore, a “physician” as defined in the Act.<sup>10</sup> In a June 16, 2005 report, Dr. Kappakas diagnosed lumbar radiculopathy with extruded disc fragment and noted that appellant “apparently had onset of this pain when he was working and doing some lifting.” Neither Dr. Novak nor Dr. Kappakas provided an opinion as to how the diagnosed conditions were caused or aggravated by the lifting of mail on June 9, 2005. It was merely noted that appellant experienced pain in his back while lifting something at work. The Board has held that medical reports containing no rationale on causal relationship are of diminished probative value.<sup>11</sup> As neither Dr. Novak nor Dr. Kappakas provide reports with an opinion as to the cause of appellant’s condition, they are of diminished probative value and insufficient to establish his claim.

In an August 9, 2006 letter, Ms. Wilson, an Office manager, noted that appellant was being treated by Dr. Chamberlin and stated his diagnoses included severe and critical lumbar spinal stenosis and “very large right-sided paracentral disc herniation at L5-S1.” She opined that his “condition was caused by repeated lifting, pushing and pulling of equipment for 24 years.” A report is not considered probative medical evidence unless established it is from a “physician” as defined in 5 U.S.C. § 8101(2).<sup>12</sup> As Ms. Wilson is not a physician, her opinion regarding appellant’s condition does not constitute probative medical evidence.<sup>13</sup>

Appellant also submitted progress notes by Mr. Harrison, a physician’s assistant; and treatment notes by Mr. Lazel, a physical therapist. These reports do not constitute probative medical evidence as neither a physician’s assistant nor a physical therapist is a physician as defined under the Act.<sup>14</sup>

The Board find’s that there is no rationalized medical evidence of record to establish that appellant sustained a lower back condition while in the performance of duty on June 9, 2005. The Board finds that he failed to meet his burden of proof.

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<sup>10</sup> See 5 U.S.C. § 8101(2).

<sup>11</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005); *Mary E. Marshall*, 56 ECAB \_\_\_\_ (Docket No. 04-1048, issued March 25, 2005).

<sup>12</sup> *Thomas L. Agee*, 56 ECAB \_\_\_\_ (Docket No. 05-335, issued April 19, 2005).

<sup>13</sup> *Desiderio Martinez*, 55 ECAB \_\_\_\_ (Docket No. 03-2100, issued January 9, 2004) (lay persons are not competent to render a medical opinion.)

<sup>14</sup> The Act, at 5 U.S.C. § 8101(2), provides that medical opinion, in general, can only be given by a qualified physician. See *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005); *David P. Sawchuk*, 57 ECAB \_\_\_\_ (Docket No. 05-1635, issued January 13, 2006). (Lay individuals such as physician’s assistants, nurses and physical therapists are not competent to render a medical opinion under the Act.)

**CONCLUSION**

The Board finds that appellant has not established that he sustained a lower back condition causally related to the June 9, 2005 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 19, 2005 is affirmed.

Issued: July 21, 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