

In a report dated August 24, 2004, Dr. Plas T. James, a Board-certified orthopedic surgeon, noted that appellant initially experienced back pain in May 2000 when he felt a “pop” in his back while bending over. The pain increased in June 2004. He diagnosed L4-5 Grade 1 spondylolisthesis with instability and L5-S1 degenerative disease. He recommended a magnetic resonance imaging (MRI) scan study.¹

By letter dated October 18, 2004, an official with the employing establishment controverted the claim. He related that appellant had a history of discipline problems and stated:

“...[M]ost recently, on August 19, 2004, [appellant] was placed on paid nonwork status (administrative leave) based on allegations of assault, terrorist threats and safety violations at work. He was subsequently arrested and charged criminally with assault and terroristic threats and issued a letter of debarment prohibiting him from coming on this installation. It is anticipated that he will be issued a contemplated removal letter during the week of October 18, 2004.”

The official noted that appellant did not file his notice of recurrence of disability until he was placed on administrative leave.

In a progress report dated October 5, 2004, Dr. James listed findings on physical examination and discussed appellant’s continued complaints of back and right leg pain. He diagnosed L4-5 Grade 1 spondylolisthesis and recommended a lumbar decompression and fusion at L4-5.

In a memorandum dated October 27, 2004, the Office noted that, as appellant attributed his condition to new work factors, it would develop his claim as an occupational disease rather than a recurrence of disability.

In a report dated November 22, 2004, Dr. James stated:

“[Appellant] states that his low back and leg pain started in May 2000, when he was bending over and felt a pop in his back and had immediate low back and right leg pain. He was treated conservatively over the years but states that his symptoms became dramatically worse in June 2004 once he started back to work.”

He diagnosed Grade 1 spondylolisthesis at L4-5, degenerative disc disease, spinal stenosis and L5-S1 degenerative disc disease and facet arthropathy. Dr. James recommended a lumbar laminectomy and fusion at L4-5 and L5-S1 and stated:

“It is my professional opinion that the current condition of [appellant’s] lumbar spine and the surgery required is a direct result of the injury he sustained in May 2000 and the reaggravation of this injury in August 2004. The physical

¹ An MRI scan study obtained on September 29, 2004 revealed L4-5 “[d]egenerative facet arthropathy and Grade 1 spondylolithesis with bilateral L4 nerve root canal narrowing” and minor degenerative disc disease and degenerative facet arthropathy.

demands of his job requirements on his lumbar spine not only led to multiple lumbar strains but also accelerated his degeneration, which in turn led to instability in the form of spondylolisthesis, the resultant degenerative disc disease, facet arthropathy and spinal stenosis that accompanies the sequelae of instability.

“[He] had no prior complaints of chronic low back or leg pain prior to his May 2000 incident and following that incident was left with chronic pain syndrome and the resultant deterioration of his lumbar spine.”

Dr. James found that appellant would exacerbate his spinal problems if he continued to perform his employment duties and again reiterated that his “lumbar condition is a direct result of his on-the-job injury in May 2000 and the recent reagravation of that injury in August 2004.”

In a notification of decision on contemplated removal dated December 9, 2004, an official with the employing establishment found that the facts warranted appellant’s removal from employment for assault, making threats, disrespectful conduct, violating safety regulations and unauthorized possession, use or manufacture of personal tools.

By decision dated December 20, 2004, the Office denied appellant’s claim on the grounds that he did not establish a medical condition causally related to factors of his federal employment. The Office noted it had accepted that appellant sustained a lumbar strain due to a May 2000 employment injury.

In a report dated January 10, 2005, Dr. Patrick A. Griffith, a Board-certified neurologist, indicated that he last treated appellant on September 10, 2003. He noted that appellant returned to work on June 7, 2004 and experienced increased back pain on August 7, 2004. Dr. Griffith listed findings on examination and diagnosed chronic post-traumatic back pain and post-traumatic lumbosacral radiculopathy at L4-5 and S1 on the right. He provided detailed work restrictions.

On November 16, 2005 appellant requested reconsideration of his claim. He related that he had submitted new evidence showing a causal relationship between his condition and factors of his federal employment.

By letter dated December 15, 2005, the employing establishment indicated that it had prosecuted appellant in district court for assault and threats.

In a letter dated February 8, 2006, appellant informed the Office that his back pain had not ceased since his initial claim was accepted in August 2001. He indicated that his pain increased after he resumed work on July 20, 2004 after being off work for hand surgery. Appellant related that he sought medical treatment on August 24, 2004 and that Dr. James told him that he needed surgery.

In a decision dated February 15, 2006, the Office denied modification of its December 20, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within the applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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 the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS

Appellant attributed his condition to his work walking on concrete and extensive standing during the course of his federal employment. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated August 24, 2004, Dr. James noted that appellant experienced back pain in May 2000, when he felt a “pop” in his back while bending over and that the pain worsened in June 2004. He diagnosed L4-5 Grade 1 spondylolisthesis with instability and L5-S1 degenerative disease. In a progress report dated October 5, 2004, Dr. James recommended a lumbar fusion. He did not, however, address the cause of the diagnosed conditions in these reports. The Board has held that 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.¹²

In a report dated November 22, 2004, Dr. James diagnosed L4-5 spondylolisthesis at L4-5, degenerative disc disease and spinal stenosis and L5-S1 degenerative disc disease and facet arthropathy. He recommended a lumbar laminectomy and fusion at L4-5 and L5-S1. Dr. James attributed appellant’s spinal condition and his need for surgery to a May 2000 employment injury and a “reaggravation of this injury in August 2004.” He stated: “The physical demands of his job requirements on his lumbar spine not only led to multiple lumbar strains but also accelerated his degeneration, which in turn led to instability in the form of spondylolisthesis, the resultant degenerative disc disease, facet arthropathy and spinal stenosis that accompanies the sequelae of instability.” Dr. James noted that appellant had no prior chronic low back or leg complaints before the May 2000 injury. He concluded that appellant’s “lumbar condition is a direct result of his on-the-job injury in May 2000 and the recent reaggravation of that injury in August 2004.” While relating appellant’s condition to his job requirements and a May 2000 injury, Dr. James did not describe either his work requirements or the circumstances surrounding the May 2000 injury, accepted by the Office for lumbar strain.¹³ Further, the physician found that appellant sustained a reaggravation of his back condition in August 2004, did not discuss the circumstances surrounding the reaggravation. Consequently, Dr. James report is of diminished probative value as it is not based on a full and complete factual history.¹⁴ Additionally, he did not explain the objective findings on which he based his determination that appellant’s work accelerated his degenerative disc disease which in turn caused spondylolisthesis, facet arthropathy and spinal stenosis. Medical opinion evidence regarding causal relationship must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is

¹² *Conard Hightower, supra* note 8.

¹³ The issue of whether appellant sustained more than a lumbar strain due to his May 2000 employment injury is not currently before the Board.

¹⁴ *Joan R. Donovan, 54 ECAB 615 (2003).*

related to the injury.¹⁵ Dr. James' report is, therefore, insufficient to meet appellant's burden of proof.

In a report dated January 10, 2005, Dr. Griffith indicated that he last treated appellant on September 10, 2003. He noted that appellant returned to work on June 7, 2004 and experienced increased back pain on August 7, 2004. Dr. Griffith diagnosed chronic post-traumatic back pain and post-traumatic lumbosacral radiculopathy at L4-5 and S1 on the right and listed work restrictions. However, he did not address the cause of appellant's diagnosed condition and thus his report is of diminished probative value.¹⁶

Appellant, consequently, has failed to establish that he sustained a back condition causally related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has not established that he sustained a back condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 15, 2006 is affirmed.

Issued: July 13, 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

¹⁵ *Id.*

¹⁶ *See Conard Hightower, supra* note 8.