

physician. In the December 21, 2004 report, Dr. Pribnow diagnosed low back pain and release appellant to modified-duty work. He noted the date of injury as December 20, 2004.

In a letter dated June 14, 2005, the Office informed appellant that the evidence of record was insufficient to support his traumatic injury claim and advised him as to the medical and factual evidence required. Appellant was given 30 days to submit the requested information.

By decision dated July 22, 2005, the Office denied appellant's claim on the grounds that he failed to establish fact of injury.

On July 25, 2005 the Office received additional factual evidence from appellant including his response to the questions posed by the Office.

On September 28, 2005 the Office received appellant's request for reconsideration, accompanied by a March 21, 2005 lumbosacral spine magnetic resonance imaging (MRI) scan, a January 10, 2004 lumbar spine computerized tomography (CT) scan and an August 24, 2005 letter regarding appellant's claim by Cherri Wagner, RN and union vice-president.

On November 2, 2005 the Office received physical therapy reports dated October 20, 25 and 28, 2005, by Julie McAllister, a physical therapist, and an October 20, 2005 evaluation summary/plan of care by Tom Provenzano, a physical therapist. In the October 20, 2005 report, Ms. McAllister notes that appellant has a herniated disc and was injured about a year ago.

On November 8, 2005 the Office received physical therapy reports dated November 1 and 4, 2005 by Ms. McAllister and an October 4, 2005 progress note/plan of care by Mr. Provenzano.

By decision dated November 9, 2005, the Office denied modification of the July 22, 2005 decision.

On November 15, 2005 the Office received reports dated October 13 and November 4, 2005 report by Dr. Derrick H. Yoshinaga, a Board-certified osteopathic occupational health physician, time analysis forms, claims for compensation for the periods October 10 to 21 and October 24 to November 14, 2005, leave requests dated October 20, 2005 and an August 11, 2005 report by Dr. See Woo, a treating Board-certified internist. Dr. Yoshinaga diagnosed low back pain and noted December 20, 2004 as the date of injury. He released appellant to modified-duty restrictions. On November 4, 2005 Dr. Yoshinaga diagnosed low back pain and lumbosacral disc degeneration, he noted December 20, 2004 as the date of injury. He reported that the "MRI scan did not support an aggravation of his lumbar injury." With respect to appellant's low back pain, Dr. Yoshinaga opined some facet arthropathy and degenerative changes could be the cause."

On August 10, 2005 Dr. Woo diagnosed lumbar radiculopathy, which the physician noted was a "[c]hronic medical condition requiring time loss as condition flares." The date of the injury was noted as December 7, 2004.

On November 21, 2005 the Office received appellant's request for reconsideration and an October 21, 2005 report by Dr. Yoshinaga, who stated that he began treating appellant on

March 29, 2005. The date of injury was listed December 20, 2004 and Dr. Yoshinaga stated that appellant related he injured himself “while pushing a patient in a wheelchair and twisted his back in the process.” Dr. Yoshinaga noted a March 7, 2005 MRI scan revealed an L5-S1 disc bulge “resulting in a mild right neural foraminal narrowing with mild encroachment on exiting right nerve roots at this level. Additional studies performed on March 30, 2005 showed appellant had “acute right L5 lumbar radiculopathy.” In concluding, Dr. Yoshinaga opined that appellant sustained “a lumbar strain that combined with his preexisting disc disease” caused the condition of right L5 lumbar radiculitis.

By decision dated December 2, 2005, the Office denied modification of the November 9, 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.¹

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.² An award of compensation may not be based on appellant’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.³

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.⁴

¹ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Paul Foster*, 56 ECAB ____ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁴ *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his right shoulder on December 7, 2004. There is no dispute that appellant was pushing a patient confined to a wheelchair on December 7, 2004, as alleged.

However, the medical evidence of record is insufficient to establish that appellant sustained an injury as the accepted employment incident. Dr. Yoshinaga diagnosed low back pain, lumbar strain and acute right L5 lumbar radiculopathy but provided no opinion as to how these conditions were caused or aggravated by appellant wheeling an obese patient in a wheel chair on December 7, 2004. Moreover, Dr. Yoshinaga incorrectly notes the date of injury as December 20, 2004. The Board has held that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value⁵ As Dr. Yoshinaga's opinion is based upon an inaccurate history regarding the date of injury, his opinion is of diminished probative value and insufficient to meet appellant's burden of proof.

Dr. Pribnow's opinion is also insufficient to support appellant's burden of proof. In a December 21, 2004 report, Dr. Pribnow reported December 20, 2004 as the date of injury and diagnosed low back pain. Dr. Pribnow provided no opinion as to the cause of appellant's condition. Moreover, his opinion is based upon an inaccurate factual history. As noted previously, medical opinions based upon an inaccurate factual history are of diminished probative value. Thus, as Dr. Pribnow provided no opinion as to the cause of appellant's condition and was based upon an inaccurate factual history, his opinion is insufficient to meet appellant's burden of proof.

Appellant also submitted an August 10, 2005 report by Dr. Woo, who noted that appellant sustained an injury on December 7, 2004 and diagnosed lumbar radiculopathy. However, Dr. Woo provides no opinion as to how the injury occurred nor does he explain how the injury caused appellant's lumbar radiculopathy. Dr. Woo's report did not adequately address the relationship between appellant's employment and his injury on December 7, 2004. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value.⁶

Appellant submitted reports from Ms. McAllister a physical therapist, who listed a herniated disc and Mr. Provenzano, a physical therapist. These reports do not constitute probative medical evidence as a physical therapist is not considered a physician under the Act.⁷

⁵ *James R. Taylor*, 56 ECAB ____ (Docket No. 05-135, issued May 13, 2005).

⁶ *Mary E. Marshall*, 56 ECAB ____ (Docket No. 04-1048, issued March 25, 2005); *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁷ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000) (a physical therapist is not a physician under the Act).

As there is insufficient rationalized medical evidence of record establishing that appellant sustained a shoulder injury while in the performance of duty as alleged, the Board finds that he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury to his lower back in the performance of duty on December 7, 2004

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 2, November 9 and July 22, 2004 are affirmed.

Issued: May 22, 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