



## **FACTUAL HISTORY**

On April 1, 2004 appellant, a 53-year-old transportation security screener, filed a traumatic injury claim alleging that on that date he “felt immediate pull of muscle in the left front lower extremity rib cage area” while lifting baggage from a work table to the floor.

In a letter dated April 23, 2004, the Office advised appellant that additional factual and medical evidence was needed. He was given 30 days to submit the requested information.

Appellant submitted a response to the Office’s questions, physical therapy notes for the period April 1 to May 3, 2004 by Shannon P. Murphy, physical therapist and another physical therapist<sup>1</sup> and prescription notes dated April 9 and 23, 2004 diagnosing spine disease, cervicalgia and sciatic.<sup>2</sup>

By decision dated May 25, 2004, the Office denied appellant’s claim on the grounds that he failed to submit any medical evidence establishing that he sustained an injury in the performance of duty.

The record reveals that Richard C. Foss, screening manager, completed a Form CA-16 on April 1, 2004, authorizing appellant to receive medical treatment for up to 60 days from that date due his lower left rib cage injury. Mr. Foss checked the box indicating that appellant was to be furnished “office and/or hospital treatment as medically necessary for the effects of this injury. Any surgery other than emergency must have prior [Office] approval.” No physician’s name or medical facility was noted on the form.

In an April 2, 2004 attending physician’s report (Form CA-20), Dr. David T. Page an attending Board-certified family practitioner, noted that appellant injured himself while lifting luggage. He diagnosed thoracic spine pain. Dr. David checked “yes” to the question of whether the condition was caused or aggravated by appellant’s employment and placed appellant on light duty for one month.

In a May 18, 2004 report, Dr. I. Michael Vella, a Board-certified orthopedic surgeon, diagnosed low back and neck pain. He noted that appellant related feeling a sharp pain in his left side while lifting baggage at work. A physical examination revealed tenderness on palpation at the seventh left rib, paraspinal muscle tenderness and decreasing flexion, rotation and extension in the cervical spine. Dr. Vella reported a “bone scan shows no particular fractures. Seventh rib activity.” He concluded that appellant was temporarily totally disabled due to his condition.

On June 4, 2004 appellant requested an oral hearing, which was held on July 14, 2005.

In an April 2, 2004 progress note, Dr. Page reported appellant was injured at work while lifting luggage and was sent home by the employing establishment. A physical examination

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<sup>1</sup> The signature is illegible.

<sup>2</sup> The signature is illegible and there is no physician’s name on the prescription.

revealed decreased thoracic spine range of motion to the right and some left chest wall tenderness.

In an April 9, 2004 x-ray interpretation, Dr. Richard Rozanski, a Board-certified diagnostic radiologist, found mild thoracic degenerative changes and “ribs to be intact without fracture or local erosion.”

In a May 7, 2004 bone scan, Dr. David Flannigan, a Board-certified diagnostic radiologist, reported “increased activity anterior edge of approximately left [seventh] rib is compatible with fracture or acute bony injury at the costal margin.” The report noted an April 1, 2004 lifting injury and left-sided and back pain. Under impression, Dr. Flannigan reported increased activity anterior edge of approximately left seventh rib compatible with injury and no spinal abnormalities seen.

Dr. Page, in a May 9, 2004 progress note, reported that appellant sustained an injury at work due to lifting luggage and was sent home due to soreness to touch. A physical examination revealed decreased thoracic spine range of motion to the right and tenderness to the left chest wall. Dr. Page diagnosed thoracic spine pain.

In a May 23, 2004 progress note, Dr. Page noted that appellant “hurt side at work lifting luggage at work.” A physical examination revealed normal lumbar spine range of motion, decreased thoracic spine range of motion to the right and some tenderness in the chest wall. Dr. Page diagnosed thoracic spine pain, lumbago and cervicgia and restricted appellant from lifting and carrying.

In a May 4, 2004 report, Dr. Vella noted that appellant sustained an injury at work on April 1, 2004 while lifting a bag onto a table and he was not working at that time. Dr. Vella indicated that appellant appeared to be in mild to moderate pain. A physical examination revealed decreased cervical, rotation, flexion and extension, paraspinal muscle tenderness and spasm. An x-ray interpretation revealed no dislocation, fracture or subluxation. Dr. Vella diagnosed low back and neck pain and concluded that appellant was temporarily totally disabled. In concluding, he noted that appellant was “to have a bone scan for this work[-]related injury while twisting and moving a heavy bag at the airport which he does not routinely do.”

On July 23 and 26, 2004 the Office received additional factual and medical evidence. In a May 24, 2004 note, Dr. Page diagnosed fractured rib and thoracic spine disease and indicated that appellant was disabled until June 26, 2004. In a June 29, 2004 report, he indicated that appellant sustained an injury at work while lifting heavy luggage. A physical examination revealed decreased range of motion in the lumbosacral and cervical and tenderness to midback and neck on light touch. Dr. Page diagnosed thoracic spine pain.

In a progress note dated August 10, 2004, Dr. Page noted the history of appellant’s injury and diagnosed fractured rib and thoracic spine disease. He reported that appellant has been unable to work due to his inability to lift and “walk more than 15 min[utes].” A physical examination revealed decreased lumbosacral and cervical range of motion, normal thoracic range of motion, tenderness on light touch to neck and midback and thoracic spine pain. Lastly, Dr. Page indicated that appellant was totally disabled until August 26, 2004.

On September 13, 2004 the Office received an August 24, 2004 lumbar evaluation by a physical therapist and physical therapy reports for the period April 14 to September 2, 2004.

On September 13, 2004 Dr. Page noted the history of appellant's injury and diagnosed back pain and noted that a magnetic resonance imaging (MRI) scan showed thoracic disc disease. A physical examination revealed decreased lumbosacral and cervical range of motion, normal thoracic range of motion, tenderness on light touch to neck and midback and thoracic spine pain.

In an April 20, 2005 attending physician's report Form CA-20, Dr. Mahender R. Goriganti, a treating Board-certified physical medicine and rehabilitation physician, diagnosed lumbar radiculopathy. He checked "yes" to the question of whether the condition was employment related with no explanation.

On June 29, 2005 the Office received additional progress notes from Dr. Page and Dr. Goriganti, together with a May 7, 2005 bone scan and a July 28, 2004 MRI scan.

In a July 6, 2005 report, Dr. Page noted that he first saw appellant on April 1, 2004 for an injury sustained that date. Appellant related that the injury occurred while lifting a 75-pound piece of luggage and he developed excruciating left-sided mid-back pain. Dr. Page stated that a physical examination "was consistent with tenderness over his left ribs which subsequently were shown to have been fractured on a bone scan done [one] month later." He concluded "the force that he applied to his rib was obviously enough to fracture it" and that the injury was a direct result of appellant's lifting the luggage "especially as he gives no other history of trauma." As to appellant's condition, Dr. Page opined that "[a]s a consequence of lifting this heavy piece of luggage and the amount of stress he applied to fracture the rib" the stress caused bulging lumbar and cervical discs. He also attributed appellant's "high degree of both cervical spine and lumbosacral spine disease" to the April 1, 2004 injury. Dr. Page opined that appellant's thoracic, lumbosacral and cervical spinal disease and fractured rib were due to the April 1, 2004 employment injury. He noted that "[t]he mechanism for this was just the large amount of weight the patient had to lift from a significant height and the repetitive nature of this type of work."

On August 10, 2005 the Office received medical reports dated September 2, 2004 to April 20, 2005 from Dr. Goriganti. On October 1, 2004 Dr. Goriganti reported "[e]vidence of chronic inactive bilateral L5 and right L4 lumbar radiculopathy." He diagnosed chronic lumbar radiculopathy in a January 5, 2005 report. Dr. Goriganti diagnosed lumbosacral strain/sprain and degenerative disc disease. On May 1, 2005 he diagnosed lumbosacral spondylosis and noted that appellant sustained an injury on April 1, 2004. A physical examination revealed decreased lumbar range of motion and lumbosacral spasm bilaterally at L5-S1. Dr. Goriganti indicated that appellant was capable of performing light sedentary work with restrictions on no prolonged standing or sitting. On August 18, 2005 he diagnosed cervical strain/sprain and lumbosacral degenerative disc disease. A physical examination revealed decreased lumbosacral range of motion, moderately decreased cervical range of motion and "severe tenderness in the trapezius musculature bilaterally." Dr. Goriganti diagnosed carpal tunnel syndrome due to appellant's employment.

By decision dated September 25, 2005, an Office hearing representative affirmed the denial of benefits. The hearing representative found the medical evidence insufficient to establish that appellant sustained a back condition and rib injury as a result of the April 1, 2004 employment incident.

In an October 28, 2005 letter, appellant's representative requested reconsideration. In an October 19, 2005 progress note Dr. Page noted that appellant was seen for back thoracic pain, which was "still severe and disabling." In reports dated October 21 and November 30, 2005, Dr. Goriganti repeated his diagnoses. A physical examination on November 30, 2005 revealed diminished lumbar range of motion, bilateral L5-S1 paralumbar tenderness and "spasm is noted in the paralumbar musculature at the level of L5-S1 bilaterally." On December 28, 2005 Dr. Goriganti diagnosed degenerative disc disease, bilateral carpal tunnel syndrome and bilateral L5-S1 lumbar radiculopathy. He opined that appellant had been totally disabled due to his low back and neck pain and bilateral carpal tunnel syndrome since September 2004. In a November 11, 2005 report, Dr. M.B. Tabie, an examining Board-certified plastic surgeon, diagnosed bilateral carpal tunnel syndrome.

By decision dated January 23, 2006, the Office denied appellant's request for a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

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>3</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>4</sup> 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.<sup>5</sup>

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

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<sup>3</sup> *Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>5</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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>6</sup>

### ANALYSIS -- ISSUE 1

In the instant case, the Office found that appellant experienced the April 1, 2004 employment incident. However, it denied the claim because of his failure to submit medical evidence diagnosing a condition caused or aggravated by the April 1, 2004 employment incident.

In order to satisfy his burden of proof, appellant must submit a physician's rationalized medical opinion on the issue of whether his back condition and rib injury was caused or aggravated by the April 1, 2004 employment incident. The Board finds that appellant failed to submit such evidence.

Appellant submitted medical evidence by Dr. Page. In an April 20, 2004 report, Form CA-20, he diagnosed left-sided thoracic pain. He checked a box yes in response to a question as to whether his condition was causally related to the employment. Dr. Page noted that the injury occurred due to lifting luggage. However, he did not explain how he arrived at this conclusion. The checking of a box yes in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>7</sup> Similarly, the various progress notes are insufficient to support appellant's claim. In this regard, Dr. Page has diagnosed thoracic spine pain, back pain, lumbago, cervicgia, fractured rib and thoracic spine disease in the various progress notes. However, none of these progress notes are sufficient to support appellant's claim as Dr. Page did not explain, with medical rationale, how appellant's diagnosed conditions were causally related to the incident on April 1, 2004 when he lifted luggage. As noted, to establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. 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>8</sup> Appellant also submitted a July 6, 2005 report by Dr. Page in which he attributes appellant's fractured rib and thoracic, lumbosacral and cervical spinal disease to the April 1, 2004 lifting incident. In support of his opinion, Dr. Page stated: "[t]he mechanism for this was just the large amount of weight the patient had to lift from a significant height and the repetitive nature of this type of work." However, the history provided by Dr. Page with regards to lifting a heavy item "from a significant height" is not consistent with the April 1, 2004 injury claim. In his claim form, appellant stated that he pulled a muscle in his rib cage area while lifting baggage from the work

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<sup>6</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>7</sup> *Sedi L. Graham*, 57 ECAB \_\_\_\_ (Docket No. 06-135, issued March 15, 2006); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Richard A. Neidert*, 57 ECAB \_\_\_\_ (Docket No. 05-1330, issued March 10, 2006).

table to the floor. Appellant neither alleged a back condition nor did he allege that he lifted a heavy item from a significant height on April 1, 2004.<sup>9</sup> Moreover, Dr. Page attributed appellant's conditions to the repetitive duties of his work and not just to the April 1, 2004 lifting incident.

Appellant also submitted a May 7, 2004 bone scan which Dr. Vella, in a May 18, 2004 report, interpreted as showing no fracture of the ribs while Dr. Page, in a July 6, 2005 report concluded that it revealed a rib fracture. Dr. Flannigan, who interpreted the May 7, 2004 bone scan, reported "increased activity anterior edge of approximately left [seventh] rib is compatible with fracture or acute bony injury at the costal margin." However, under impression, he reported "increased activity anterior edge of approximately left [seventh] rib compatible with injury" and no spinal abnormalities seen. Thus, the evidence is equivocal as to whether the bone scan showed a left rib fracture as appellant's physicians provided conflicting opinion as to the existence of the fracture.

Appellant also submitted several reports by Dr. Vella, who in a May 4, 2004 report, noted that appellant injured himself on April 1, 2004 while lifting a bag onto a table and diagnosed neck and low back pain. An x-ray interpretation revealed no subluxation, fracture or dislocation. In a May 18, 2004 report, Dr. Vella noted that appellant injured himself at work and diagnosed low back and neck pain. He noted no fractures were seen on a bone scan although the scan did show seventh rib activity. The Board notes that a diagnosis of "pain" does not constitute the basis for the payment of compensation,<sup>10</sup> without explanation. In addition, Dr. Vella failed to address the causal relationship between the diagnosed condition of neck and back pain and the accepted incident.<sup>11</sup> As noted, to establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. These reports from Dr. Vella do not meet these criteria and do not establish that appellant sustained a work-related back injury on April 1, 2004.

The record also contains various reports by Dr. Goriganti diagnosing various conditions including cervical strain/sprain, lumbar radiculopathy lumbosacral strain/sprain, degenerative disc disease and lumbosacral spondylosis. However, this evidence is insufficient to establish appellant's claim as Dr. Goriganti did not specifically address whether the accepted incident caused a diagnosed condition.<sup>12</sup>

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<sup>9</sup> See *James R. Taylor*, 56 ECAB \_\_\_\_ (Docket No. 05-135, issued May 13, 2005) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

<sup>10</sup> *Robert Broome*, *supra* note 3.

<sup>11</sup> See *Michael E. Smith*, 50 ECAB 313, 316-17 (1999).

<sup>12</sup> *Ellen L. Noble*, 55 ECAB \_\_\_\_ (Docket No. 03-1157, issued May 7, 2004) (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).

As appellant failed to establish that he sustained a medical condition causally related to the April 1, 2004 incident when he lifted a bag from the table to the floor at work, the Office properly denied his compensation claim.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act<sup>13</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.<sup>14</sup>

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>15</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>16</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent new evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Appellant submitted an October 19, 2005 progress note by Dr. Page noting that appellant was seen for back thoracic pain, which was "still severe and disabling;" reports dated October 21 and November 30, 2005 by Dr. Goriganti diagnosing lumbosacral sprain/strain; and a December 28, 2005 report and work capacity evaluation (Form OWCP-5c) by Dr. Goriganti, which diagnosed degenerative disc disease, bilateral carpal tunnel syndrome and bilateral L5-S1 lumbar radiculopathy. Dr. Goriganti and a November 11, 2005 report by Dr. Tabie diagnosing bilateral carpal tunnel syndrome. These documents do not contain medical evidence addressing the relevant issue of causal relationship. The Board has held that the submission of evidence

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<sup>13</sup> 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>14</sup> *Jeffrey M. Sagrecy*, 55 ECAB \_\_\_\_ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

<sup>15</sup> 20 C.F.R. § 10.606(b)(2).

<sup>16</sup> 20 C.F.R. § 10.608(b).

<sup>17</sup> *Annette Louise*, 54 ECAB 783 (2003).

which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>18</sup> Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury to his back or ribs in the performance of duty on April 1, 2004. The Board also finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 23, 2006 and September 25, 2005 are affirmed.

Issued: September 19, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>18</sup> See *David J. McDonald*, 50 ECAB 185 (1998).