



In a January 13, 2003 report, Dr. Samuel C. Santoriello, a physician of unknown specialty, noted that appellant was involved in a work accident in which her chair collapsed and in which she fell and landed on the floor. He examined her and diagnosed cervical sprain/strain, lumbar sprain/strain and chest sprain/strain.

In a March 6, 2003 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. James Port, a Board-certified diagnostic radiologist, found a synovial cyst or osteophyte projecting from the facet joint at the T10-11 level, at L3-4 marked annular bulging with right paracentral disc protrusion, with lateral extension and disc desiccation at L5-S1 and annular bulging with small broad-based right paracentral disc protrusion impeding on the descending and exiting S1 and L5 nerve roots respectively and no spinal stenosis.

On April 3, 2003 the Office accepted the claim for a muscular sprain of the cervical and lumbar spine and authorized physical therapy from January 28 to May 1, 2003. Appellant received appropriate compensation benefits and returned to light duty on March 15, 2003.<sup>1</sup>

In an April 4, 2003 MRI scan of the thoracic spine, Dr. Loralie Ma, a Board-certified diagnostic radiologist, found no evidence of disc herniation, canal stenosis or neural foraminal narrowing. In a June 27, 2003 MRI scan of the thoracic spine, Dr. Robert Van Besien, a Board-certified diagnostic radiologist, determined that appellant had a slight deformity at the posterior aspect of the thecal sac at T10-11, minimal disc bulging at T2-3 and T3-4 and endplate spurring at T5-6 through T8-9. He also noted that appellant had a "subtle abnormal increased signal seen within the central aspect of the cord extending from approximately T4-5 through T9-10."

In a report dated July 3, 2003, Dr. Daniel Levy, a Board-certified pediatrician, requested that the employing establishment schedule appellant for work for three days a week on a short-term basis due to recent medical problems. The record indicates that appellant's hours were reduced to three days per week and she continued to work part time.

In a report dated July 31, 2003, Dr. Christopher Galuardi, a Board-certified anesthesiologist and treating physician, indicated that he had originally treated appellant with injections of steroids and medication for chest, neck and thoracic spine pain. He noted that, at the same time, she fell off a chair and was having back pain. Dr. Galuardi recommended additional epidural steroid injections and advised that appellant continue to work 3 days a week, for 8 hours a day, with a weight lifting restriction of 10 pounds. He completed a disability certificate of the same date advising the above-noted restrictions.

In an October 29, 2003 report, Dr. Levy opined that he believed that appellant's problems of musculoskeletal pain were due in part to the work-related injury.

On February 3, 2004 appellant filed a notice of recurrence alleging a recurrence of disability in July 2003. She stated that she returned to limited-duty work and alleged that she had pulling in her lower back area, pain in both legs, with burning in both legs, behind the knees, hip pain and pain in the middle of the buttocks area. When asked to describe how the recurrence

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<sup>1</sup> Appellant has a prior injury that occurred on July 13, 1999 when she worked for a college. The injury, to her neck and left shoulder, required an anterior cervical discectomy and fusion on May 30, 2001.

occurred, she alleged that it occurred in July 2003 and that the “pain had never went away” from January 13, 2003 and that she still had the same condition. The employing establishment indicated that appellant’s work schedule was reduced from five to three days a week in July 2003. She also completed numerous CA-7’s for the period July 2, 2003 to December 31, 2004.

The Office continued to develop the claim and on March 26, 2004 referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon.

In an April 12, 2004 report, Dr. Hanley noted appellant’s history of injury and treatment and that she presented with complaints of neck and back pain. He also noted that in July 2003 appellant was placed on part-time duty comprised of working only eight hours per day for three days a week and that she continued to work at that level. Dr. Hanley examined the cervical spine and determined that appellant had a well-healed scar with moderate limitation of motion due to pain. Examination of the back revealed moderate limitation of motion of the lumbar spine due to complaints of discomfort. Straight leg raising was negative, reflexes were intact and there was no evidence of neurologic compromise in either the upper or lower extremity. Dr. Hanley opined that appellant’s cervical and lumbar sprain/strains had resolved and that she no longer had residuals of the accepted injury. He also noted that she continued to have residuals of her cervical disc disease for which appellant underwent a cervical fusion in 2001 as well as her degenerative disease in the lumbar spine. Dr. Hanley noted that these conditions were not caused by the January 13, 2003 employment injury.

On April 29, 2004 the Office referred appellant, along with a statement of accepted facts, and the medical record to Dr. Gary Pushkin, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in opinion between appellant’s physicians, Dr. Galuardi and Dr. Levy who advised that appellant could only work three days a week and continued to suffer from residuals of her accepted injury and Dr. Hanley who opined that appellant’s accepted condition had resolved.

In a May 13, 2004 report, Dr. Pushkin noted appellant’s history of injury and treatment which included the 1999 injury. He examined the cervical spine and found that appellant had soft tissue tenderness, 75 degrees of right and left lateral rotation and 25 degrees of forward flexion and extension and no pain with motion. Dr. Pushkin also found no neurocirculatory deficit. Regarding the lumbosacral spine, he indicated that appellant had some tenderness at L5-S1, but no sciatic notch tenderness and full range of motion with pain at the extremes of motion with diminished reflexes at the knees and ankles bilaterally and negative straight leg raising bilaterally. Dr. Pushkin opined that on January 13, 2003 she sustained soft tissue injuries, which included a sprain/strain to her cervical spine and a sprain/strain to the lumbosacral spine. He further noted appellant’s course of treatment and reviewed the x-rays and diagnostic reports and advised that there was “no damage to the hardware in appellant’s neck and no evidence of any changes in her cervical spine.” Dr. Pushkin opined that he did not believe that appellant had any permanent effect on her anterior cervical fusion and that her soft tissue injuries to her cervical and lumbosacral spines had resolved. He further indicated that appellant’s ongoing complaints were related to her previous injury and that her obesity and lack of conditioning were also contributing factors. Dr. Pushkin opined that appellant was capable working a 40-hour

week without restrictions as her position was sedentary job and there were no objective findings. He opined that she had reached maximum medical improvement, that appellant had recovered from her injuries of January 13, 2003 and no further treatment was warranted.

By letter dated May 27, 2004, the Office requested clarification from Dr. Pushkin regarding whether appellant's disability commencing July 2003 was related to the work-related injury.

In a June 1, 2004 addendum, Dr. Pushkin opined that he did not believe that appellant's disability beginning in July 2003 of only working 24 hours a week was related to her January 13, 2003 work injury.

By decision dated September 1, 2004, the Office denied appellant's claim for a recurrence of disability beginning in July 2003. Appellant was advised that the weight of the medical evidence rested with Dr. Pushkin, the impartial medical specialist, who opined that her accepted injuries had resolved and that she could work a 40-hour week without restrictions. The Office informed her that, as she no longer had residuals of her accepted condition, medical treatment was no longer authorized.

On September 16, 2004 appellant's representative requested a hearing which was held on June 27, 2005. The Office received additional CA-7's for the period February 15 to October 5, 2005. The Office received several reports, dated November 4, 18 and December 2, 2003, from Dr. Galuardi noting epidural steroid injections for lumbar radiculopathy. Additionally, on September 17 and December 10, 2004, Dr. Galuardi diagnosed lumbar spondylosis with back pain and hip bursitis with hip pain and performed bilateral lumbar facet rhizotomies at L2, L3, L4 and S1 and bilateral hip bursal injections.

Dr. Galuardi continued to treat appellant. In some of his reports, he offered an opinion that appellant's condition was work related and that she could only work restricted hours and continued to have residuals from her accepted injury. In an undated attending physician's report received by the Office on December 10, 2004, Dr. Galuardi checked the box "yes" that he believed appellant's condition was related to her employment and filled in "no prior history of back pain prior to January 13, [2003]." He opined that appellant was totally disabled from March 31 to May 8, 2003 and partially disabled from July 31, 2003 to October 24, 2004. In a June 24, 2004 report, Dr. Galuardi noted that appellant had back pain due to lumbar spondylosis and recommended that she only work eight hours a day four days a week. In a December 17, 2004 disability certificate, Dr. Galuardi advised that appellant underwent a surgical procedure on December 10, 2004 and needed to stay off work for December 16 and 17, 2004, due to complications. In a February 24, 2005 report, he diagnosed cervical and lumbar spondylosis with mild spinal stenosis in the lumbar spine and recommended further medical evaluations.

By letter dated August 9, 2005, appellant's representative enclosed an additional report from Dr. Galuardi dated July 28, 2005. Dr. Galuardi opined that appellant's disc problems at L4-5 and L5-S1 were causally related to the employment injury. He added that he never diagnosed a muscle sprain. Dr. Galuardi also noted that appellant had lumbar spondylosis, which was a "form of traumatic joint arthritis" and opined that it was not a preexisting condition.

Dr. Galuardi also indicated that he had not had the opportunity to review the reports of Dr. Hanley and Dr. Pushkin.

By decision dated September 27, 2005, the Office hearing representative affirmed the Office's September 1, 2004 decision. He found that the medical evidence did not support the claimed disability. In particular, the Office hearing representative noted that Dr. Galuardi advised that he did not diagnose a muscular strain and that he was of the opinion that appellant's lumbar disc condition was related to her work injury. However, he noted that a strain was diagnosed in the initial hospital treatment record and that Dr. Galuardi did not provide supporting rationale. The Office found that the report of Dr. Pushkin was entitled to be accorded the weight of the medical evidence and established that appellant had not sustained a recurrence of total disability in July 2003 causally related to her accepted January 13, 2003 employment injury.

In an April 21, 2005 report, Dr. Galuardi diagnosed spinal stenosis at C4-5 resulting in bilateral C5 radiculopathy and opined that appellant's symptoms were due to the pathology at C4-5 because she had little relief of her back pain from interventional treatments. The Office also received several attending physician's reports from Dr. Galuardi. In his reports, Dr. Galuardi checked the box "yes" that he believed appellant's condition was related to her employment. In some of these reports, he filled in "no prior history of back pain prior to January 13[, 2003]." Dr. Galuardi opined that appellant was totally disabled from March 31 to May 8, 2003 and partially disabled from July 31, 2003 to September 8, 2005.

In a December 13, 2005 letter, appellant's representative requested reconsideration and alleged that her claim was not a recurrence, but rather alleged that appellant's accepted condition continued and never resolved. Counsel also included a new report from Dr. Galuardi.

In a report dated October 24, 2005, Dr. Galuardi noted appellant's history of injury and treatment, including the reports of Dr. Pushkin and Dr. Hanley. He explained that appellant did not "come to me complaining to me of back pain from a lumbar strain or sprain." Dr. Galuardi indicated that "[g]enerally, after six weeks other causes for back pain must be found and my subsequent research revealed that she had lumbar degenerative disc disease with lumbar disc hernias and lumbar radiculopathy." He noted that he based his findings and conclusion that appellant's ongoing back and leg pain stemmed from the January 13, 2003 employment incident on the fact that, prior to the incident, she was able to work full time and was not complaining of back pain. Dr. Galuardi also advised that the MRI findings were significant to show that she became symptomatic.

By decision dated May 10, 2006, the Office denied modification of the September 27, 2005 decision as the evidence was insufficient to warrant modification.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total

disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.<sup>2</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.<sup>3</sup> This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>4</sup> The physician's 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 specific employment factors identified by the claimant.<sup>5</sup>

### ANALYSIS

The Office accepted that on January 13, 2003 appellant sustained a muscular sprain of the cervical and lumbar spine, authorized physical therapy and paid wage-loss compensation until she returned to limited duty on March 15, 2003. The evidence indicates that this limited-duty position remained available. After appellant's physician restricted her to working three days a week in July 2003, she filed her recurrence of disability claim.

The Office developed the medical evidence and determined that a conflict in medical opinion was created between Dr. Hanley, an Office referral physician, who found that appellant's accepted condition had resolved and Dr. Galuardi and Dr. Levi, for appellant, who opined that appellant could only work three days a week and that she had residuals of her accepted injury.

Section 8123(a) of the Federal Employees' Compensation Act<sup>6</sup> provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>7</sup> In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>8</sup>

Dr. Pushkin examined appellant, discussed the history of injury and reviewed the evidence of record. He reviewed diagnostic reports and noted her anterior fusion from 1991 and

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<sup>2</sup> *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). See 20 C.F.R. § 10.5(x), (y) (defines the terms "recurrence of disability" and "recurrence of medical condition").

<sup>3</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>4</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>5</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> 5 U.S.C. § 8123(a).

<sup>8</sup> *Barbara J. Warren*, 51 ECAB 413 (2000).

opined that the injury on January 13, 2003 had no permanent effect on her fusion. Dr. Pushkin conducted an examination of the cervical spine and determined that there was no evidence of a neurocirculatory deficit. He concluded that appellant's soft tissue injuries to her cervical and lumbosacral spines had resolved. Dr. Pushkin explained that appellant's ongoing complaints were related to her previous injury, her obesity and lack of conditioning and that she was capable of working a 40-hour work week with no restrictions as her position was sedentary and she had no objective findings related to the January 13, 2003 work injury. He opined that she had completely recovered from the January 13, 2003 injury and no further treatment was warranted. In a June 1, 2004 addendum, Dr. Pushkin opined that appellant's disability commencing in July 2003 was not related to the January 13, 2003 work injury.

The Board finds that Dr. Pushkin provided a detailed and well-rationalized report based on a proper factual background and thus, his opinion is entitled to the special weight accorded an impartial medical examiner. His report, therefore, constitutes the weight of the medical opinion evidence and establishes that appellant did not have a recurrence of disability beginning in July 2003 due to the January 13, 2003 work-related injury.

Although appellant continued submitting medical reports after the Office received Dr. Pushkin's reports, the Board finds that she did not submit sufficient reasoned medical evidence that she had disability beginning July 2003 causally related to her January 13, 2003 employment injury. This medical evidence includes numerous reports from appellant's physician, Dr. Galuardi, who continued to treat appellant and recommend restrictions, which he opined were related to the employment injury. In most of these reports, Dr. Galuardi either did not specifically address causal relationship between partial disability beginning in July 2003 and the accepted injury or he merely reiterated previously-stated findings and conclusions regarding appellant's condition. For example, in his June 24, 2004 report, Dr. Galuardi merely noted that appellant had back pain due to lumbar spondylosis and recommended that she only work eight hours a day four days a week. He did not offer any opinion that appellant had a recurrence of disability in July 2003 causally related to her January 13, 2003 employment injury such that she could no longer perform her light-duty requirements. Furthermore, as Dr. Galuardi had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the treating physician's reports were insufficient, in the absence of new reasoning or findings, to overcome the special weight accorded the impartial specialist or to create a new medical conflict.<sup>9</sup> He also completed several attending physician's reports in which he checked a box "yes" that he believed appellant's condition was related to her employment and filled in "no prior history of back pain prior to January 13[, 2003]." Other form reports offered no reasoning for the opinion on causal relationship. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>10</sup> The Board has also held that, when a physician's opinion on causal relationship consists only of checking

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<sup>9</sup> *Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>10</sup> *John F. Glynn*, 53 ECAB 562 (2002).

yes to a form question, without explanation or rationale that opinion is of diminished probative value and is insufficient to establish a claim.<sup>11</sup>

In his July 28, 2005 report, Dr. Galuardi opined that appellant's disc problems at L4-5 and L5-S1 were causally related to the employment injury and that he never diagnosed a muscle sprain. However, the Board notes that initial records on the date of the injury contain diagnoses of cervical sprain/strain, lumbar sprain/strain and chest sprain/strain. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>12</sup> Dr. Galuardi did not provide any rationale to explain how he arrived at this conclusion, nor did he offer an opinion as to why appellant's obesity, preexisting conditions or lack of conditioning did not affect her condition. In his report dated October 24, 2005, Dr. Galuardi noted that he had reviewed the reports of Dr. Pushkin and Dr. Hanley and explained that appellant did not "come to me complaining to me of back pain from a lumbar strain or sprain." He indicated that "[g]enerally, after six weeks other causes for back pain must be found and my subsequent research revealed that she had lumbar degenerative disc disease with lumbar disc hernias and lumbar radiculopathy." Dr. Galuardi opined that appellant's ongoing back and leg pain stemmed from the January 13, 2003 employment incident because prior to the incident, she was able to work full time and was not complaining of back pain. To the extent that appellant may be claiming that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>13</sup> As noted above, an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.

The record also contains other medical reports including diagnostic reports. However, these reports do not establish appellant's claim as they did not contain an opinion regarding the cause of claimed disability beginning July 2003. The record also contains reports from physician's assistants. However, section 8101(2) of the Act<sup>14</sup> provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Consequently, these reports cannot be considered medical evidence.

Accordingly, appellant has not met her burden of proof to establish that, due to her accepted injury, she could no longer work in her light-duty position, full time, beginning July 2003.

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<sup>11</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>12</sup> *James R. Taylor*, 56 ECAB \_\_\_\_ (Docket No. 05-135, issued May 13, 2005).

<sup>13</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>14</sup> See 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing July 2003 due to the January 13, 2003 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2006 and September 27, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 10, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board