

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Springfield, MA, Employer**

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**Docket No. 07-998**

**Issued: August 22, 2007**

*Appearances:*

*Katherine Smith, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 26, 2007 denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a traumatic injury in the performance of duty on May 10, 1998.

**FACTUAL HISTORY**

On May 30, 1998 appellant filed a traumatic injury claim alleging that on May 30, 1998 he pulled a muscle in his groin area while lifting a sack of mail. He did not submit any medical evidence in support of his claim. On October 23, 1998 appellant filed a recurrence claim stating that on October 9, 1998 when he was pushing away from the table, he felt sharp pain in the left side of his groin area. In a November 8, 1998 letter, the Office requested additional factual and

medical information from appellant. In an October 28, 1998 report, Dr. James Hession, Board-certified in internal medicine, diagnosed left groin pain secondary to muscle strain and recommended light duty.

On January 26, 1999 the Office denied appellant's claim for injury on May 30, 1998 and recurrence on October 9, 1998 on the grounds that the medical evidence failed to provide the connection between the diagnosed condition and the employment incident.

Appellant submitted additional medical evidence. In a January 29, 1999 letter, Dr. Hession stated that a December 30, 1998 computerized tomography (CT) scan showed an annular bulge or broad-based herniation at L4-5 and opined that appellant's symptoms could be due to this disc herniation. In a December 14, 1998 report, Dr. John Zeroogian, Board-certified in internal medicine, stated that appellant's November 1998 CT scan was negative and that a small unappreciated hernia was possible, but unlikely. The November 28, 1999 CT scan examination revealed that there was "no explanation seen for patient's pain and fever."

On February 22, 1999 appellant requested reconsideration of the Office's January 26, 1999 decision. On May 25, 1999 the Office denied modification on the grounds that the evidence of record did not support a causal relation between appellant's medical condition and the work incident.

On July 14, 1999 appellant again requested reconsideration. Accompanying his request was a June 21, 1999 letter from Dr. Marc Linson, Board-certified in orthopedic surgery, who diagnosed broad-based herniation at L4-5 and small herniation at L5-S1, based on a December 30, 1998 CT scan. Dr. Linson related appellant's condition to his work injury based on the medical history provided by appellant and also opined that the injury was "causally responsible" for his back and leg pain.

By decision dated October 5, 1999, the Office denied modification of the prior decision.

On September 27, 2000 appellant requested reconsideration. He submitted a September 13, 2000 letter from Dr. Ronald Paasch, a physiatrist, who stated that appellant had discogenic low back pain secondary to previous stated incident. The Office also received a February 4, 1999 MRI scan report from Dr. Patrick Rucker, Board-certified in diagnostic radiology, who diagnosed mild diffuse disc bulge at L3-4, L4-5 and L5-S1 and noted that the disc bulges did not appear to abut the exiting nerve roots. In a January 29, 1999 report, Dr. Linson stated that appellant's symptoms could be due to disc herniation disruption at the L4-5 level.

On November 28, 2000 the Office denied modification of its prior decisions, on the grounds that the medical evidence lacked a reasoned medical opinion addressing causal relationship.

On November 18, 2001 appellant requested reconsideration. Appellant submitted numerous progress notes from Dr. Paasch for the period January 5 through July 20, 2001 including a July 20, 2001 note in which Dr. Paasch assessed appellant with chronic low back pain secondary to discogenic pain L5-S1 and left groin pain.

Other medical evidence submitted included a November 2, 2001 letter from Dr. Hession who stated that “the pain is being caused by a disc problem in his back,” a September 21, 2001 letter from Dr. Vincent Guardione, a surgeon, who stated, “I find no evidence of any left inguinal hernia” an October 16, 2001 note from Dr. Pohlman who repeated that appellant thought there was a direct connection between his left groin pain and back condition and an October 13, 2000 note from Dr. Robert Cowan, Board-certified in internal medicine, who found appellant to have multilevel degenerative disc changes.

On January 10, 2002 the Office denied modification of its prior decisions on the grounds that the evidence failed to establish a causal relationship between appellant’s condition and his employment.

On January 6, 2003 appellant, through his representative, requested reconsideration. He submitted a July 19, 2002 discharge summary with Dr. Cowan reporting that appellant underwent anterior and posterior fusion L5-S1 and diagnosing appellant with disc collapse and degeneration on L5-S1 level. Also submitted were two identical three-page claim summarizations signed by Dr. Cowan and Dr. Paasch on December 6 and 30, 2002 respectively. The summarizations stated that “all medical data and treatment history and patient symptoms are entirely consistent with a lumbar spine injury sustained to the lumbar region of May 30, 1998 which involved L3-4, L4-5, L5-S1. The latter injury produced nerve root impingement entirely consistent with the nature and locus of the described pain.”

By decision dated March 11, 2003, the Office denied modification of the prior decision, as the evidence did not contain a rationalized medical opinion explaining the relationship between appellant’s employment and his diagnosed condition. In an amended decision dated March 19, 2003, the Office again denied modification of the prior decision.

On March 19, 2004 appellant requested reconsideration. In support of his request, he submitted a June 19, 2003 letter from Dr. Hession, who opined that appellant’s complaints of back, left groin and leg pain and subsequent surgery for disc disease are entirely related to his work injury of May 30, 1998. In a March 26, 2003 progress note, Dr. Paasch opined that appellant’s back and groin symptoms are related to his original work injury from May 30, 1998. In a November 2, 2001 letter, Dr. Hession stated that appellant did not have a hernia but that his pain was caused by a disc problem being treated by Dr. Cowan. Appellant submitted a March 19, 2004 letter from the American Postal Workers Union in support of his claim. He submitted an affidavit dated March 19, 2004, which described his May 30, 1998 workplace incident and his medical history. Medical reports submitted included a February 15, 2004 letter. Dr. Hession stated that appellant sustained a L5-S1 disc herniation in 1998 from lifting a sack of mail at work. In a February 19, 2004 letter, Dr. Cowan opined that appellant suffered a work-related injury on May 30, 1998 resulting in an exacerbation of his preexisting disc condition, a February 20, 2004 letter from Dr. Paasch, who diagnosed as chronic low back pain secondary to failed back syndrome and status post fusion and also opined that appellant’s symptoms were a result of the work-related injury on May 30, 1998.

On June 18, 2004 the Office denied reconsideration on the grounds that the request was not filed within one year of the latest decision and that appellant had shown no clear evidence of error. In a September 14, 2004 letter, appellant appealed the decision to the Board. In a

February 24, 2005 decision, the Board found that appellant's request was timely filed and set aside the Office's prior decision.

On April 22, 2005 the Office issued a *de novo* merit decision which denied modification based on the grounds that the evidence lacked a rationalized medical opinion causally relating appellant's back condition and the employment incident.

On April 21, 2006 appellant requested reconsideration. His representative presented his own summary of the medical evidence. Appellant's representative also alleged that the Office had a duty to develop the medical evidence; that appellant was not required to present medical evidence of a definitive diagnosis; and that appellant's own statements regarding the history of injury should be accepted. In a July 25, 2006 nonmerit decision, the Office denied appellant's reconsideration request on the grounds that no new evidence was submitted or legal argument put forth. On October 23, 2006 appellant requested review of the reconsideration decision, based on the fact that new legal arguments were made in his April 21, 2006 request for reconsideration. On January 26, 2007 the Office issued a merit decision based on appellant's legal arguments and denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> Causal relationship is

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>6</sup>

### ANALYSIS

In order to establish that he sustained a traumatic injury appellant must establish “fact of injury” which consists of two components, whether the incident occurred as alleged and whether the incident caused an injury.<sup>7</sup> In this case, appellant has established that the incident occurred as alleged. The case turns on whether the incident caused an injury. The Board finds that appellant submitted insufficient evidence to establish causal relation.

Dr. Hession’s reports fail to provide sufficient support to establish appellant’s claim. In his October 28, 1998 report, he diagnosed left groin pain and muscle strain. A physician’s mere diagnosis of pain does not constitute a basis for payment of compensation.<sup>8</sup> In his January 29, 1999 report, Dr. Hession diagnosed broad-based herniation at L4-5. He also opined that appellant’s symptoms could be due to the disc herniation. This opinion is inconclusive and speculative at best. Dr. Hession is essentially stating that appellant’s symptoms could also be due to a different cause. Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>9</sup> In a November 2, 2001 report, Dr. Hession stated that appellant’s pain was being caused by a disc problem in his back. He still offered no medical explanation as to how appellant’s employment caused the disc herniation or appellant’s pain complaints. In a June 19, 2003 report, Dr. Hession opined that all of appellant’s ailments were related to his work injury on May 30, 1998. The report lacks the requisite medical rationale to demonstrate the causal relationship between the employment incident and the injury. The medical opinion to establish a claim 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>10</sup> In a February 15, 2004 letter, Dr. Hession opined that appellant sustained a disc herniation in 1998 from lifting a sack of mail at work. His cursory opinion without explanation is of diminished probative value.<sup>11</sup> In all of his reports, Dr. Hession failed to provide the necessary medical rationale to support his opinion on the causal relationship between appellant’s condition and the work incident.

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<sup>6</sup> See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 3. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant’s specific employment factors. *Id.*

<sup>7</sup> See *supra* note 5.

<sup>8</sup> *Robert Broome*, 55 ECAB 493 (2004).

<sup>9</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006).

<sup>10</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005).

<sup>11</sup> See *Brenda L. DuBuque*, 55 ECAB 667 (2004); see also *David L. Scott*, 55 ECAB 330 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Dr. Paasch's medical opinions also failed to demonstrate the causal relation between the work incident and appellant's condition. In a September 13, 2000 letter, he stated that appellant had discogenic low back pain secondary to the previously stated incident. The medical opinion to establish a claim 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>12</sup> Dr. Paasch's letter lacks an opinion as to how the two are related. In a July 20, 2001 report, he diagnosed chronic low back pain and discogenic pain and left groin. Pain is not a compensable diagnosis. In a December 30, 2002 claim summary, Dr. Paasch stated that the medical data and patient symptoms were consistent with a lumbar spine injury sustained on May 30, 1998. He never diagnosed appellant with a specific lumbar spine injury nor did he provide a medical rationale in support of his opinion. An opinion without explanation is of diminished probative value.<sup>13</sup> In a March 26, 2003 progress note, Dr. Paasch opined that appellant's back and groin symptoms were related to his original work injury. But as before, his opinion lacks medical rationale to support his conclusions. In his February 20, 2004 letter, Dr. Paasch opined that appellant's symptoms were a result of the work-related injury on May 30, 1998. He concluded that appellant's symptoms were caused by his work-related incident but failed to provide a medical rationale to support his conclusion. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>14</sup>

Dr. Cowan's medical reports lack an opinion on causal relation. In an October 13, 2000 note, he diagnosed multilevel degenerative disc changes. In a July 19, 2002 report, Dr. Cowan diagnosed disc collapse and degeneration on L5-S1. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</sup> In a December 6, 2002 report, Dr. Cowan again fails to provide a cause for appellant's condition outside of identifying an injury. In a February 19, 2004 report, he opines that appellant suffered a work-related injury which exacerbated his condition but Dr. Cowan failed to provide the necessary medical rationale to support his medical opinion. An opinion without a medical rationale is insufficient to demonstrate the necessary causal relation between appellant's condition and the work incident.

In a June 21, 1999 report, Dr. Linson diagnosed appellant with broad-based herniation at L4-5 and opined that appellant's condition was related to his work injury as there was no other traumatic reason for occurring other than what appellant described. An award of compensation may not be based on speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.<sup>16</sup> Causal relation cannot be shown simply by stating that appellant's injury was caused by his employment because there is no other cause.

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<sup>12</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, *supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, *supra* note 10.

<sup>15</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>16</sup> *D.D.*, *supra* note 9.

Neither the fact that a condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>17</sup> Dr. Linson also opined that appellant's work injury was causally responsible for his back and leg pain but again offered no diagnosis and no medical explanation of causal relationship. He did not causally relate the workplace incident to a diagnosed condition nor did he provide any medical rationale to support his opinion. In a January 29, 1999 report, Dr. Linson stated that appellant's symptoms could be due to disc herniation, but this statement is inconclusive. Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>18</sup> While he accurately described the work incident stating that appellant was lifting a sack of mail and felt a pull in his left groin, he failed to explain how the lifting is related to a diagnosed condition.

The remaining medical evidence of record does not contain a rationalized medical opinion explaining how the work-related incident caused or aggravated any medical condition or disability. Dr. Rucker provided a diagnosis but no opinion as to causation. Dr. Pohlman, in his October 16, 2001 note, relays appellant's opinion that there is a direct connection between his left groin pain and back condition but never offers his own medical opinion regarding such connection. Dr. Zeroogian simply stated that a small hernia was possible but unlikely. As none of the medical evidence of record contains a rationalized medical opinion explaining how the work-related incident caused or aggravated any medical condition or disability appellant has failed to meet his burden.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a traumatic injury in the performance of duty.

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<sup>17</sup> *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005).

<sup>18</sup> *D.D.*, *supra* note 9

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 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