

FACTUAL HISTORY

On August 10, 2005 appellant, then a 50-year-old modified materials handler, filed a traumatic injury claim alleging that on August 2, 2005 she experienced pain from her left shoulder blade to the left side of her back as a result of squatting and reaching for an item on a lower shelf. She was taken to an emergency room on August 2, 2005 and diagnosed with an acute back strain. Appellant has not returned to work.

The record contains documents pertaining to File No. 160311599 for a February 12, 1998 work injury, which the Office accepted for a lumbar strain and lumbar disc displacement.³ Appellant received compensation benefits until she returned to work eight hours a day on July 27, 2005. She returned to work on that date after an impartial medical specialist opined that she no longer had residuals from her February 12, 1998 work injury and that her cervical condition was not work related. The impartial medical specialist further opined that appellant's cervical and lumbar conditions were due the natural aging process.

In an August 2, 2005 report, Dr. Kevin E. Gorin, a physiatrist, diagnosed an acute back strain due to the February 12, 1988 employment injury. He indicated that appellant was able to return to work part time for four hours per day with restrictions on August 3, 2005 for two days. In reports dated August 4, 10 and 15, 2005, Dr. Gorin diagnosed leg pain, cervical pain and lumbar pain and opined that appellant was totally disabled. By placing a check mark in the appropriate box on the form report, he opined that appellant's conditions were either due to the February 12, 1988 employment injury or caused or aggravated by her reaching/squatting work activities on August 2, 2005.

In an August 29, 2005 report, Dr. Gorin advised that appellant underwent a myelogram and computerized tomography (CT) scan of the cervical and lumbar spines on August 22, 2005. The findings were abnormal in comparison to a 2003 myelogram. Dr. Gorin related the new abnormalities to the August 2, 2005 work incident. He advised that it was a mistake for appellant to have returned to work and, as a result, her cervical spine was made symptomatic by her work activities which had corresponding abnormalities on the cervical spine studies. Dr. Gorin opined that appellant was totally disabled for duty at any capacity.

In a September 21, 2005 report, Dr. Clark A. Gunderson, a Board-certified orthopedic surgeon, noted the history of appellant's February 12, 1998 and August 2, 2005 work injuries. X-rays of the cervical spine revealed degenerative changes at C5-6 and C6-7 levels, x-rays of the lumbar spine showing a narrowed lumbosacral disc, and a myelogram and CT scan showing a disc herniation with a spondylosis at C5-6 and C6-7. Dr. Gunderson opined that appellant's complaints relative to her neck and lower back were probably related to her cervical and lumbar disc disease.⁴ In an October 19, 2005 duty status report, he stated that the cervical and lumbar disc disease was related to the August 2, 2005 work incident and that appellant was totally disabled.

³ See *supra* note 2.

⁴ Copies of an April 27, 2005 MRI scan of the cervical spine and a June 27, 2003 myelogram and CT scan of the cervical spine were also provided.

Appellant requested continuation of pay for her absences incurred as a result of her August 2, 2005 work incident and filed CA-7 forms claiming compensation from August 3, 2005 onwards.

In an October 31, 2005 letter sent to Dr. Gunderson, the Office noted appellant's preexisting cervical and lumbar disc disease and inquired as to whether appellant's current diagnosed conditions were causally related to the August 2, 2005 work incident. It requested that Dr. Gunderson provide a rationalized medical opinion on the causal relationship between the diagnosed cervical and lumbar disc disease and the August 2, 2005 employment incident.

In a November 8, 2005 report, Dr. Gunderson advised that appellant had complaints since February 12, 1998, which included cervical disc disease with a herniated disc and that pain management was attempted. He stated that she had an aggravation of a continual problem after she returned to work. Dr. Gunderson opined that all of appellant's complaints were continuous and date back to the February 12, 1998 injury. He further opined that she was disabled from the February 12, 1998 work injury, not the August 2, 2006 incident.

By decision dated November 14, 2005, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence failed to demonstrate that her claimed medical condition was related to the established work-related incident. By decision dated November 14, 2005, the Office also denied appellant's request for continuation of pay for the period August 3 through September 18, 2005.

By letter dated November 30, 2005, appellant, through her representative, requested an oral hearing. A telephonic hearing was held on March 9, 2006.

In an August 15, 2005 report, Dr. Gorin advised that appellant had been under his care in the outpatient pain management and rehabilitation arena on a monthly basis since January 29, 1999. He noted that she was released to work and sustained additional injury as a direct result of this release. Dr. Gorin advised that it remained to be seen whether appellant developed new injuries or whether her underlying conditions from her first injury were made more symptomatic by her lifting and reaching work activities. He stated that it was "clear to me, with more medical probability than not, that, upon this patient's return to work on August 2, 2005, she did, in fact, suffer additional injuries.... She should not have been returned to the workforce, because of this initial injury in fact did result in the creation of a cervical spine injury from a lumbar spine injury." Dr. Gorin further opined that appellant was not fit for duty in any capacity.

In a November 16, 2005 duty status report, Dr. Gunderson opined that appellant's cervical disc disease was due to the August 2, 2005 work incident and she was totally disabled.

By decision dated May 30, 2006, an Office hearing representative affirmed the November 14, 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 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.⁵ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁶

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.⁷ An award of compensation may not be based on appellant's belief of causal relationship.⁸ 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.⁹ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.¹⁰

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.¹¹

⁵ *Robert Broome*, 55 ECAB 339 (2004).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Tracey P. Spillane*, 54 ECAB 608 (2003). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(q), (ee).

⁷ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.303(a).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

Appellant alleged that, on August 2, 2005, she sustained an injury while squatting and reaching for an item on a lower shelf. The Board finds that the evidence supports that the employment incident occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the August 2, 2005 employment incident caused an injury. The Board finds that the medical evidence presented does not contain a rationalized medical opinion establishing that the August 2, 2005 employment incident caused or aggravated her claimed disability. Therefore, appellant has failed to satisfy her burden of proof.

Dr. Gorin's reports are insufficient to establish appellant's claim. In an August 2, 2005 report, he diagnosed an acute back strain but related it to appellant's previous work injury of February 12, 1998. In reports of August 4, 10 and 15, 2005, Dr. Gorin diagnosed leg pain, lumbar and cervical pain and opined that appellant was totally disabled. However, none of these reports contain a reasoned medical opinion explaining how the disability reported for the period commencing August 3, 2005 was related to the August 2, 2005 incident. The only reference to the cause of disability was a check mark of yes to the question as to whether the condition was employment related with no explanation. The Board has held that when a physician's opinion on causal relationship consists only of checking yes to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² Subsequent reports reflect that Dr. Gorin attributed appellant's disability to her previous work injury of February 12, 1998 or to the August 2, 2005 claimed injury. His opinion is ambiguous and not based on a complete factual and medical background.¹³

In August 15 and 29, 2005 reports, Dr. Gorin opined that appellant sustained additional injuries from her return to work on August 2, 2005. He explained that appellant suffered a new injury to her cervical spine by her work activities on August 2, 2005 as shown by new abnormalities on cervical spine studies. However, Dr. Gorin failed to discuss the nature of the relationship between appellant's current condition and the work-related incident and, specifically, how the incident exacerbated her symptoms. He did not specify the nature of the prior condition or explain why appellant's current condition was not the natural progression of the original condition, rather than a result of the August 2, 2005 work-related incident. Without explanation, Dr. Gorin's assertion that appellant's condition was related to the August 2, 2005 incident is not sufficient to establish causal relationship.¹⁴ Dr. Gorin is required to explain how appellant's condition is causally related to the August 2, 2005 employment injury. Therefore, his opinion lacks probative value.

On September 21, 2005 Dr. Gunderson reported a diagnosis of cervical and lumbar disc disease. The Office solicited additional evidence from him in further development of the claim. In a November 8, 2005 report, Dr. Gunderson did not provide any medical opinion to support that appellant's current diagnosis of cervical disc disease with a herniated disc was causally

¹² *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

¹³ See *John W. Montoya*, *supra* note 11.

¹⁴ *Id.*

related to the August 2, 2005 work incident. Dr. Gunderson reported that appellant's diagnosed condition and continuous complaints dated to the February 12, 1998 work incident and that her disability was a result of the February 12, 1998 work injury, not the August 2, 2006 work incident. While Dr. Gunderson subsequently attributed appellant's cervical disc disease and disability to the August 2, 2005 work incident, he failed to provide an adequate explanation for his change in opinion or present any medical rationale explaining how or why the August 2, 2005 work incident caused or aggravated appellant's diagnosed condition.¹⁵ Therefore, his opinion lacks probative value.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on August 2, 2005.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *Robert Broome, supra* note 5.