



## **FACTUAL HISTORY**

On April 27, 2007 appellant, then a 53-year-old medical support assistant, filed a traumatic injury claim alleging that on the same date a coworker shook her chair causing her to experience neck pain. She stopped work on April 27, 2006 and returned on May 4, 2006.<sup>1</sup>

Appellant was treated in the emergency room on April 27, 2006 for neck pain and spasm. She reported that she was shaken in her chair by a coworker. Appellant was treated by Dr. Betty Varghese, a Board-certified family practitioner, who noted that appellant's history was significant for neck fusion, bilateral shoulder surgery, carpal tunnel release and low back surgery. Dr. Varghese diagnosed cervicgia and noted that appellant's muscle spasms in her neck were most likely secondary to trauma. She advised that appellant could return to work on May 4, 2006.

By letter dated May 17, 2006, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by her had contributed to her claimed back injury.

Appellant submitted an undated statement and indicated that her coworker, Craig Haught, was aware of her neck condition and recent neck fusion and proceeded to shake her chair on approximately 12 to 13 occasions during the month of April which caused additional injury to her neck. A magnetic resonance imaging (MRI) scan of the cervical spine dated May 1, 2006 revealed a cervical fusion from C4 to C7 without complication and a right paracentral disc/osteophyte complex at C3-4. Appellant submitted a report from Dr. Brett C. Gunter, a Board-certified neurosurgeon, dated May 3, 2006, who noted that on May 4, 2005 he performed a complete cervical corpectomy at C5, partial surgical corpectomy at C4 and C6 and an anterior cervical discectomy at C6-7. Appellant reported that her coworker shook her chair numerous times in April causing right neck, shoulder and arm pain. Dr. Gunter diagnosed large central and right paracentral disc herniation at C3-4 and recommended a corpectomy at C3-4.

The employing establishment submitted a statement from Mr. Haught, appellant's coworker, dated May 1, 2006, who noted that he and appellant enjoyed a friendly relationship and he did on occasion gently shake her chair. Mr. Haught noted that appellant never indicated that her neck hurt as a result of this activity.

In a decision dated June 30, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.<sup>2</sup>

In an undated statement, appellant requested reconsideration and again asserted that Mr. Haught shook her chair throughout the month of April 2006 causing her neck pain.

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<sup>1</sup> Appellant filed an occupational disease claim on September 24, 1997 which was accepted by the Office for bilateral carpal tunnel syndrome.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

Appellant submitted a report from Dr. Subhash J. Patel, a Board-certified orthopedist, dated February 28, 2000, who treated appellant for bilateral carpal tunnel syndrome. An MRI scan of the cervical spine dated February 1, 2005 revealed central C3-4 and C5-6 disc osteophyte complexes along with a right paracentral C6-7 disc osteophyte complex which produced significant cord mass effect and broad-based diffuse disc protrusions at C4-5. Appellant submitted a report from Dr. Gunter dated February 15, 2005, who treated her for spinal cord compression. She presented with right-sided neck pain which radiated into her right arm. Dr. Gunter diagnosed cervical spinal stenosis as a result of a narrow spinal canal, a component which was congenital and degenerative cervical disc disease. In an operative report dated March 4, 2005, he performed a complete cervical corpectomy of C5, partial cervical corpectomy of C4 and C6 and an anterior cervical discectomy at C6-7, decompression of the cervical spinal cord, anterior interbody arthrodesis, C4-5, C5-6 and C6-7, anterior interbody device placement at C4-5 and C5-6 and anterior interbody arthrodesis at C4-5, C5-6 and C6-7. Dr. Gunter diagnosed severe cervical spinal stenosis, cervical spondylosis at C4-5, C5-6 and C6-7 and status post decompression. Also submitted was a report from Dr. Christopher T. McCarty, a Board-certified orthopedist, dated February 21, 2005, who performed a cervical myelogram which revealed no obvious high grade central spinal stenosis. Appellant submitted x-rays of the cervical spine dated April 5 and May 31, 2005 which revealed status post corpectomy with strut graft in place at C5 and an anterior fusion at C6-7. An x-ray of the cervical spine dated August 30, 2005 revealed status post corpectomy at C5 with strut graft in place and no change in vertebral body alignment. An x-ray of the cervical spine dated November 22, 2005 revealed a stable postoperative radiographic appearance of the cervical spine. Also submitted were reports from Dr. Thomas Ewart, a Board-certified orthopedist, dated February 2 to March 21, 2006, who treated appellant for carpal tunnel syndrome. An x-ray of the cervical spine dated May 1, 2006 revealed a radiographically stable cervical spine with no evidence of subluxation. A report from Dr. Benjamin Massey, a Board-certified internist, dated May 25, 2006, noted treating appellant for abdominal pain secondary to marked hypertriglycerideia.

In a decision dated November 1, 2006, the Office denied modification of the prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

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<sup>3</sup> Gary J. Watling, 52 ECAB 357 (2001).

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

The Office properly found that the April 27, 2006 incident occurred as appellant alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a neck injury causally related to the April 27, 2006 incident.

Appellant submitted emergency room records dated April 27, 2006 where she was treated by Dr. Varghese for neck pain and spasm. She reported that her neck pain began after a coworker shook her chair. Dr. Varghese indicated that appellant's history was significant for neck fusion, bilateral shoulder surgery, carpal tunnel release and low back surgery. She diagnosed cervicgia and noted that appellant's muscle spasms in her neck were "most likely" secondary to trauma. However, at best, this report provides only speculative support for causal relationship as the physician qualifies her support by noting that the shaking incident at work "most likely" caused her condition.<sup>8</sup> Dr. Varghese provided no medical reasoning to support her opinion on causal relationship. In light of appellant's prior history of neck and shoulder conditions, the need for medical rationale explaining why the employment incident caused or

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<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>8</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

aggravated her diagnosed condition is especially important. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a report from Dr. Gunter dated February 15, 2005, who treated appellant for cervical spinal stenosis and on March 4, 2005 performed cervical surgery. However, this report is of no value in establishing the claimed neck injury since it predates the time of the claimed injury of April 27, 2006. Another report from Dr. Gunter dated May 3, 2006, noted appellant's history was significant for a complete cervical corpectomy at C5, partial surgical corpectomy at C4 and C6 and an anterior cervical discectomy at C6-7 which was performed on March 4, 2005. He related that appellant reported that her coworker shook her chair numerous times in April 2006 causing right neck, shoulder and arm pain. Dr. Gunter diagnosed large central and right paracentral disc herniation at C3-4 and recommended a corpectomy at C3-4. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Gunter is providing his own opinion, the doctor failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>9</sup>

The remainder of the medical evidence either predates the claimed injury or does not offer an opinion on the causal relationship between appellant's job and her diagnosed neck condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a neck injury causally related to her April 27, 2006 employment incident.

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<sup>9</sup> *Jimmie H. Duckett, supra* note 7.

<sup>10</sup> *See Dennis M. Mascarenas, 49 ECAB 215 (1997).*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 1 and June 30, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 8, 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