



Dr. Jose G. Dones Vazquez, a Board-certified orthopedic surgeon, for decompression surgery at L3 to L5.

By letter dated March 8, 2007, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationships of his claimed conditions and the November 21, 2006 incident.

Appellant submitted a statement indicating that he delayed in filing a claim because he did not want to miss work; however, he filed a claim after experiencing a stiff back. On November 21, 2006 he noted that he was inspecting marinated shrimp alignment belts and stepped on a defective floor drain guard and fell on his back. In a December 19, 2006 report, Dr. Jose Luis Ayala, a podiatrist, treated appellant for cellulitis and infection of both feet. He noted appellant's history was significant for diabetes and he developed two foot wounds. Dr. Ayala diagnosed cellulitis, possible osteomyelitis and out of control diabetes. He admitted appellant to the hospital for intravenous antibiotics and local wound care. Appellant came under the treatment of Dr. Humberto De La Vega, a Board-certified family practitioner, from December 24, 2006 to March 6, 2007 for diabetes and bilateral foot wounds. Dr. De La Vega diagnosed diabetes mellitus type II, hypertension, osteomyelitis, abscess of the left foot, hearing loss and lumbar spinal stenosis. On March 6, 2007 he treated appellant in follow up for abscess of the left foot.

In a decision dated April 17, 2007, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that his conditions were caused by the November 21, 2006 incident.

On May 12, 2007 appellant requested an oral hearing which was held on October 11, 2007. He submitted a report from Dr. Gustavo F. Stern, a Board-certified surgeon, dated December 18, 2006, who treated appellant for a work-related low back injury, which occurred on November 21, 2006. Appellant reported that he was working on a marinated shrimp alignment belt, stepped on a defective floor drain guard and slipped and landed on his back. He had low back pain radiating into the right inguinal area with left leg numbness. Dr. Stern noted findings upon physical examination of decreased sensation to the bilateral lower legs, painful limited range of motion, pain to the lumbar and sacral area with sitting and rising. He diagnosed difficulty in walking and low back pain and recommended a magnetic resonance imaging (MRI) scan. On March 14, 2007 appellant was treated by Dr. Ayala for osteomyelitis and foot abscess. He noted that the wound was completely healed with no edema, erythema or infection. Dr. Ayala diagnosed history of severe wound with osteomyelitis completely healed.

Appellant also provided reports from Dr. Madhavan Pisharodi, a Board-certified neurosurgeon. On May 7, 2007 Dr. Pisharodi advised that appellant reported that he fell several months earlier with pain in the lumbar area and radiation into the right hip and leg with numbness. He noted findings of symmetrical and equal deep tendon reflexes in the upper and lower extremities bilaterally, sensory loss at L4 on the right and L5 and S1 on the left with positive straight leg raises. Dr. Pisharodi diagnosed chronic back pain, lumbar canal stenosis and lumbar degenerative disc disease. He noted that in all probability the L4-5 canal stenosis was the pain generator and recommended physical therapy. In a November 16, 2007 report,

Dr. Pisharodi noted that appellant's back pain commenced secondary to several falls and the most recent incident occurred several months before evaluation. He noted findings of sensory loss of appellant's left leg, decreased lumbar range of motion, tenderness of the paraspinal muscles, positive straight leg raises with muscle weakness. A lumbar MRI scan revealed evidence of lumbar canal stenosis at L3-4 and L4-5 without nerve root impingement. As appellant did not respond to conservative treatment, he underwent a posterior lumbar decompression. Dr. Pisharodi opined that, because appellant did not have back pain prior to his fall, in all medical probability, it triggered the back pain and caused his lumbar stenosis to be come.

In a December 31, 2007 decision, the hearing representative affirmed the April 17, 2007 decision denying appellant's claim.

### **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 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>2</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 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>3</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>4</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</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>6</sup>

### ANALYSIS

Appellant alleged that he sustained a low back injury when he slipped and fell while performing inspecting duties on November 21, 2006. The Board notes that the evidence supports that the incident occurred on November 21, 2006 as alleged. However, the medical evidence is insufficient to establish that appellant sustained a low back groin or right leg injury causally related to the November 21, 2006 slip and fall incident. On March 8, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit sufficient medical opinion from an attending physician addressing how the November 21, 2006 slip and fall caused or aggravated his claimed conditions.

Appellant submitted reports from Dr. Ayala, a podiatrist, for treatment of cellulitis and infection of the bilateral feet. Dr. De La Vega also noted treating appellant for several conditions. However, Drs. Ayala and De La Vega's reports are insufficient to establish the claim as the physicians did not provide any history of the November 21, 2006 incident or address whether how the November 21, 2006 slip and fall caused or contributed to the diagnosed medical conditions.<sup>7</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

On December 18, 2006 Dr. Stern noted a history of appellant's work injury and diagnosed difficulty walking and low back pain. He reported working on a marinated shrimp alignment belt and stepping on a defective floor drain guard and falling on his back. Although, Dr. Stern noted the history of injury as reported by appellant, he did not provide his own opinion regarding whether the medial conditions were work related.<sup>8</sup> He failed to provide a rationalized opinion explaining the causal relationship between appellant's low back condition and the incident of November 21, 2006.<sup>9</sup> Dr. Stern did not explain the reasons why the November 21, 2006 incident caused or aggravated the diagnosed condition.

On May 7, 2007 Dr. Pisharodi noted appellant's treatment for low back pain secondary to several falls. Appellant reported the back pain commenced secondary to several falls, with the most recent incident occurring several months before his initial evaluation in May 2007.

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<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> *A.D.*, 58 ECAB \_\_\_ (Docket No. 06-1183, issued November 14, 2006) (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>8</sup> *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>9</sup> *See Jimmie H. Duckett*, *supra* note 6.

Dr. Pisharodi diagnosed chronic back pain, lumbar canal stenosis and lumber degenerative disc disease. However, he did not address whether appellant's condition was work related. Dr. Pisharodi did not note the history of a fall at work on November 21, 2006.<sup>10</sup> On November 16, 2007 he noted MRI scan findings and that appellant underwent a posterior lumbar decompression. Dr. Pisharodi noted that appellant attributed his back pain to his fall. He opined that, because appellant did not have back pain prior to his fall, in all medical probability, his fall triggered the back pain and caused his lumbar stenosis to be symptomatic. However, Dr. Pisharodi again did not specifically address the fall at work on November 21, 2006.<sup>11</sup> His only rationale on causal relationship is that appellant had no back problems prior to the fall. However, 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 is insufficient, without supporting rationale, to support a causal relationship.<sup>12</sup> Dr. Pisharodi failed to address how the nonemployment factors, such as the prior falls and appellant's diabetes may have affected his back condition.

The remainder of the medical evidence, including a surgical procedure consent form, fails to address causal relationship between appellant's diagnosed conditions and the November 21, 2006 work incident.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a low back, groin and right leg injury causally related to his November 21, 2006 employment incident.

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<sup>10</sup> See *Frank Luis Rembisz*, *supra* note 8.

<sup>11</sup> See *id.* (a medical opinion based on an incomplete history is insufficient to establish causal relationship).

<sup>12</sup> *Kimper Lee*, 45 ECAB 565 (1994).

<sup>13</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 31 and April 17, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2008  
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