



By letter dated April 19, 2007, the Office asked appellant to submit additional information, including a comprehensive medical report from his treating physician. It requested a reasoned explanation as to how the March 29, 2007 incident identified by appellant had contributed to his claimed injury.

Appellant submitted an April 13, 2007 report of magnetic resonance imaging (MRI) scan from Drs. David Rose and John Ponzio. It revealed a broad-based disc bulge eccentric to the right with superimposed acute disc herniation within the right neural foramen at L4-5 and probable impingement of the exiting L4 nerve root on the right.

In a decision dated May 18, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his back condition was work related.

### **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 an 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

The Board notes that on March 29, 2007 appellant was climbing a stake bed truck to load repair parts as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a herniated disc of the lower back causally related to the March 29, 2007 incident.

On April 19, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

The only medical evidence submitted by appellant was a diagnostic of the lumbar spine date April 13, 2007, which revealed a broad-based disc bulge eccentric to the right with superimposed acute disc herniation within the right neural foramen at L4-5 and probable impingement of the exiting L4 nerve root on the right. However, the report did not address the issue of causal relationship. There is no explanation as to how the March 29, 2007 incident caused or contributed to the L4-5 disc. As noted, appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship. The diagnostic scan is insufficient to establish his claim.

The record contains no other medical evidence. Appellant has not submitted rationalized medical opinion evidence explaining how and why his herniated disc is employment related. He has not met his 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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.<sup>7</sup> Appellant failed to submit such evidence. The Office properly denied his claim for compensation.<sup>8</sup>

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

<sup>6</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>7</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>8</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This does not preclude appellant from requesting reconsideration from the Office and submitting additional evidence for consideration.

**CONCLUSION**

The Board finds that appellant failed to establish an injury related to the March 29, 2007 incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 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