

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

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**M.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Albany, NY, Employer**

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**Docket No. 07-1107  
Issued: June 10, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 9, 2007, which affirmed the denial of her lumbar condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained a lumbar injury on August 27, 1999.

**FACTUAL HISTORY**

On August 27, 1999 appellant, then a 49-year-old clerk, sustained injury when she bent over to pick up a ruler and slipped off her swivel chair. The Office accepted her claim for right shoulder sprain, right shoulder impingement syndrome, right elbow sprain and bilateral knee contusions. The Office authorized shoulder surgery in 2000 and knee surgeries which were

performed in 2002 and May 28, 2003. Appellant did not stop work. She retired on July 13, 2003.

Appellant received emergency room treatment by Dr. Jonathan E. Markson, Board-certified in emergency medicine, on August 27, 1999. Dr. Markson reported that appellant fell off her chair at work and struck her right temporal area, right shoulder, right forearm and both knees. He noted that appellant had a history of arthritis, cervical disc disease of C5-6 and a cervical fusion in March 1998. Dr. Markson diagnosed status post fall, right parietal temporal scalp contusion, right shoulder strain and bilateral knee contusions. Appellant was also treated by Dr. Patricia Hart, an osteopath. In reports dated August 30 to October 6, 1999, Dr. Hart stated that appellant presented with pain on the right side of her face, arm, knee and low back. She reported a history of a fall at work on August 27, 1999. Dr. Hart advised that appellant's history was significant for chronic radiculopathy and status post C5-6 fusion. She diagnosed myofascial pain in the cervical spine, right shoulder, elbow and right leg, cervical spine fusion with chronic radiculopathy exacerbated, lumbosacral strain with lower extremity sciatica with no neurologic deficits and chronic knee pain due to osteoarthritis.

In treatment notes dated November 2 and December 20, 1999, Dr. Jalal Sadrieh, a Board-certified orthopedic surgeon, noted a history of a 1989 work-related neck injury, for which appellant underwent surgery. He diagnosed status post cervical discectomy and fusion at C5-6. In reports dated January 17 to December 13, 2000, Dr. Sadrieh treated appellant for pain in the right scapular region of the shoulder and low back pain. He diagnosed several conditions including degenerative disc disease of the cervical spine and degenerative disc disease of the lumbar spine with left-sided radicular pain. On June 7, 2000 Dr. Sadrieh performed an arthroscopy of the right shoulder, open acromioplasty and repair of the rotator cuff.

Appellant submitted a lumbar magnetic resonance imaging (MRI) scan dated October 16, 2000, which revealed L3-4 mild central canal stenosis and L4-5 central disc herniation. In a report dated February 8, 2001, Dr. Sadrieh treated appellant for back and left knee pain. He noted reviewing the emergency room records from August 27, 1999 and opined that the injury of August 27, 1999 caused appellant's back, right shoulder and knee problem. In reports dated March 7 to November 20, 2001, Dr. Sadrieh treated appellant for shoulder, back and knee pain and diagnosed several conditions, including degenerative disc disease of the lumbar spine. He opined that appellant's fall at work aggravated her preexisting lumbar condition. On July 27 and September 26, 2001 Dr. Sadrieh performed right L3-4 and L4-5 transformational epidural injections and diagnosed lumbar spondylosis without myelopathy.

Appellant came under the treatment of Dr. Richard G. Zogby, a Board-certified orthopedic surgeon. On September 10, 2002 Dr. Zogby noted a history of injury on August 27, 1999 and subsequent symptoms of low back pain radiating into the legs since the injury. He diagnosed lumbar spinal stenosis, spondylolisthesis acquired and low back pain and recommended a laminectomy of L3-4 and L4-5, fusion of L3-4 and an iliac crest graft. Appellant submitted a report dated October 7, 2002 from Dr. Sadrieh, who noted that she had degenerative process in her knee and back but was asymptomatic until the August 1999 injury. Dr. Sadrieh opined that the 1999 injury caused her condition to be symptomatic. He recommended a lumbar laminectomy.

On December 6, 2002 the Office referred the record and a statement of accepted facts to an Office medical adviser for a determination as to whether appellant's lumbar condition was causally related to the August 27, 1999 work injury and, if so, whether the recommended surgery was appropriate. In a December 19, 2002 report, the medical adviser noted that appellant had evidence of preexisting degenerative spinal disease; however, there was no good evidence to support a direct causal relationship between the back condition and the work injury of August 27, 1999. On December 24, 2002 the Office advised appellant that the evidence was insufficient to authorize the proposed surgery. It requested that she submit a comprehensive medical report addressing causal relationship between her work and her low back condition.

On January 2, 2003 appellant asserted that her lumbar condition was accepted by the Office because it had authorized lumbar steroid injections. She submitted treatment records from Dr. Scott Gringold, a Board-certified orthopedic surgeon, dated January 27 to July 14, 1998. Dr. Gringold noted performing a cervical fusion and carpal tunnel release. Appellant also submitted reports from Dr. Sadrieh dated January 22, 2003 to October 22, 2004. Dr. Sadrieh treated appellant for lumbar pain and diagnosed degenerative disc disease of the lumbosacral spine and lumbar discogenic back pain with lumbar radiculopathy. On June 30, 2003 Dr. Zogby noted treating appellant for lumbar pain commencing after a fall at work on August 27, 1999 and diagnosed lumbar spinal stenosis and spondylolisthesis. He opined that appellant's back and leg pain were "100 percent" related to the accident of August 27, 1999. In reports dated December 10, 2003 to March 4, 2005, Dr. Zogby treated appellant for dysfunction and pain in the lumbar spine and noted a date of injury of August 27, 1999. An MRI scan of the lumbar spine dated August 12, 2003, revealed degenerative disc change, diffuse disc protrusion at L3-4 with facet degenerative change and a central disc protrusion and facet degenerative changes at L4-5.

In an April 14, 2005 decision, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her low back condition was caused by her accepted injury. The Office noted that appellant's treating physicians did not provide a detailed report explaining how her lumbar condition was causally related to the work incident of August 27, 1999.

On May 10, 2005 appellant requested an oral hearing which was held on October 24, 2006. She submitted a May 18, 2005 report from Dr. Sadrieh, who noted a history of appellant's treatment for a back injury from a work incident on August 27, 1999. Dr. Sadrieh opined that her prior medical treatment validated the work-related injuries from 1999 to her back, shoulders, cervical spine and knees. In a November 1, 2006 report, he indicated that appellant fell on August 27, 1999 and sustained injuries to her back causing disc protrusion, lumbar radiculopathy and lumbar discogenic back. Dr. Sadrieh opined that her fall caused the lower back condition. Appellant submitted reports from Dr. Zogby dated September 22, 2005 to June 12, 2006, who treated her for low back pain and diagnosed low back pain, lumbosacral radiculitis and paresthesia. Dr. Zogby noted a date of injury of August 27, 1999 and indicated that appellant was awaiting surgical authorization. On November 1, 2006 he noted that appellant reported falling off a chair at work and diagnosed compression injury to her low back. Dr. Zogby indicated that, biomechanically, this would cause a disc bulge and pinch nerves in the lumbar spine causing pain radiating down the buttocks, legs and feet.

In a decision dated January 9, 2007, the hearing representative affirmed the Office decision dated April 14, 2005.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>1</sup>

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.<sup>2</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>3</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>4</sup>

### **ANALYSIS**

Appellant alleges that she injured her low back on August 27, 1999 when she bent over to pick up a ruler and slipped off her swivel chair. The Office accepted the claim, as noted, for several conditions but did not accept a lumbar condition.

The Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her low back condition was caused or aggravated by her accepted work injury. However, the Board notes that the medical evidence submitted by appellant generally supports that she sustained an aggravation of her preexisting lumbar condition causally related to this work injury. The medical records submitted most contemporaneously with the date of the alleged injury, specifically Dr. Hart's reports dated August 30 to October 6, 1999, noted a history of appellants fall on August 27, 1999. Dr. Hart diagnosed, among other conditions, a lumbosacral strain with lower extremity sciatica.

Reports from Dr. Sadrieh dated January 17 to December 13, 2000 noted treating appellant for low back pain and diagnosed degenerative disc disease of the lumbar spine with left-sided radicular pain. On February 8, 2001 he reviewed the emergency room record from August 27, 1999 and opined that appellant's injury caused her back, symptoms. In other reports

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<sup>1</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>2</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</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).

dated March 7, 2001 to November 1, 2006, Dr. Sadrieh diagnosed degenerative disc disease of the lumbar spine and opined that appellant's fall at work on August 27, 1999 aggravated her preexisting degenerative condition. He noted that appellant had a degenerative process in her low back but was asymptomatic until the August 1999 injury, which caused her condition to be symptomatic. In a report dated November 1, 2006, Dr. Sadrieh indicated that appellant sustained a fall on August 27, 1999 and sustained injuries to her back causing disc protrusion, lumbar radiculopathy and lumbar discogenic back. He opined that her fall caused the lower back condition.

Appellant also submitted reports from Dr. Zogby dated September 10, 2002 to June 12, 2006. Dr. Zogby addressed her low back symptoms following the August 27, 1999 injury and diagnosed lumbar spinal stenosis, and spondylolisthesis and recommended lumbar surgery. On June 30, 2003 he diagnosed lumbar spinal stenosis and spondylolisthesis and opined that these conditions were "100 percent" related to the accident of August 27, 1999. On November 1, 2006 Dr. Zogby noted that appellant fell off a chair at work and suffered an axial compression injury to her low back. He opined that biomechanically, this incident would cause a disc bulge and pinch nerves in the lumbar spine causing pain radiating down the buttocks, legs and feet.

Although the opinions of treating physicians are not sufficiently rationalized to establish her claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.<sup>5</sup>

On December 19, 2002 the Office medical adviser reviewed the record and provided brief handwritten comments. He opined that there was no good evidence to suggest a direct causal relationship between the back condition and the work injury of August 27, 1999. However, the Office medical adviser did not provide medical rationale explaining the basis of his conclusory opinions regarding the causal relationship between appellant's lumbar condition and the accepted injury.<sup>6</sup>

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>7</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

The Board will remand the case to the Office for preparation of a statement of accepted facts concerning appellant's work injury and referral of the matter to an appropriate medical specialist. The Office should ask the physician whether appellant sustained an aggravation of

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> See *Jimmie H. Duckett*, *supra* note 4. Likewise, it is not necessary that an employment injury be the direct cause of a condition for compensability. See *Charles A. Duffy*, 6 ECAB 470 (1954) (aggravation of preexisting diseases or defects is as compensable as an original or new injury).

<sup>7</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

her preexisting lumbar condition as a result of the accepted work injury. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2007 decision of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: June 10, 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