



By letter dated July 13, 2007, the Office requested that appellant submit further information.

By letter dated July 28, 2007, appellant indicated that his alleged back injury was caused by long periods of sitting to complete computer and paperwork as well as making and cleaning beds, replenishing linen closets and restocking linen shelves. These activities required repetitive motion bending, stooping, leaning and lifting and aggravated his prior injury.

On September 27, 2006 the Office received a September 6, 2007 medical report from Dr. Kenneth I. Light, a Board-certified orthopedic surgeon, who stated:

“[Appellant] has been troubled by increasing neck pain with increasing numbness and weakness in his right upper extremity. If the problem is ignored, I am fearful that he would not be able to use his right arm and continue on with work. I am sure you can understand that when he was initially injured the back condition took precedent. He did not recognize that the neck condition was so severe that it might require surgery. Initially, he had something called *cauda equine* syndrome which would take precedent over any other condition. As a result of working at the [employing establishment] lifting beds and lifting heavy boxes actually up until now, gradually the initial injury worsened as a result of again an initial twist of the neck during the “horse play accident” and cumulative trauma suffered as a result of repetitive lifting since.

“I would appreciate your attention to this matter since [appellant] is in need for surgery, and without surgery will potentially lose the use of his right arm.”

By decision dated October 2, 2007, the Office denied appellant’s claim, finding that he did not establish an injury under the Act. The Office noted that appellant did not submit any medical evidence in response to its July 13, 2007 letter.

### **LEGAL PRECEDENT**

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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>1</sup>

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<sup>1</sup> *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

### ANALYSIS

The Office accepted that appellant was exposed to the alleged employment factors. However, it denied appellant's claim on the grounds that he failed to submit medical evidence to establish that the accepted employment activities caused a personal injury. In making this determination, the Office failed to consider the September 6, 2007 medical report of Dr. Light which was submitted prior to its October 2, 2007 decision denying appellant's claim. It is well established that the Office must consider all evidence of record. Since the Board's jurisdiction of a case is limited to reviewing the evidence which was before the Office at the time of its final decision and the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>2</sup> Dr. Light's report addresses the issue of whether appellant's work activities resulted in a compensable medical condition. There is no indication that the Office ever reviewed this evidence. Accordingly, the case will be remanded to the Office for a review of the evidence submitted and an appropriate decision.

### CONCLUSION

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

### ORDER

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 2, 2007 is set aside and remanded for further proceedings consistent with this opinion.

Issued: June 24, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>2</sup> 20 C.F.R. § 501.6(c); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, 41 ECAB 548 (1990).