



(FSM). The reverse of the claim form indicated that appellant had been working light duty since December 2003. Appellant first became aware of an employment-related condition on February 18, 1999.

On September 27, 2004 appellant stated that she aggravated her back at work in December 1998 and reported it to her supervisor. She indicated that she was diagnosed with a herniated disc but no claim form was filed. Appellant reported she continued to have back pain. Appellant submitted an August 19, 2004 report from Dr. Jessica Seematter, a chiropractor, who recommended that she not work on an FSM due to her chronic L5-S1 disc problem. Dr. Seematter noted that when appellant was not working on the FSM, her spine would show occasional misalignments that are correctable with chiropractic adjusting and ergonomic changes. The record also contains reports from a physician commencing November 24, 2003 recommending light duty.<sup>1</sup>

By decision dated November 23, 2004, the Office denied appellant's claim for compensation. The Office found the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration and submitted treatment notes from Dr. Bendt Peterson, III, an orthopedic surgeon. In a September 21, 2004 note, Dr. Peterson indicated that appellant was seen six years earlier for an L5-S1 herniated disc. On January 20, 2005 Dr. Peterson discussed the results of a functional capacity evaluation and indicated that appellant was restricted to 25 pounds lifting infrequently. In an April 27, 2005 statement, appellant reported she had been lifting heavy sacks during Christmas 1998 and was treated by Dr. Peterson on February 18, 1999. Appellant referred to another OWCP File No. "where recently it reaggravated my injury again."

In a decision dated June 17, 2005, the Office denied modification of the November 23, 2004 decision, finding the medical evidence was insufficient to establish the claim.

Appellant again requested reconsideration of her claim. In a report dated March 10, 2006, Dr. John Semon, an orthopedic surgeon, reported appellant had a long history of back pain which she stated began after a work-related injury in December 1998. He diagnosed acute cervical strain, chronic low back pain syndrome and probable anxiety. In a report dated June 7, 2005, Dr. Seematter recommended that appellant have a back supported chair at work.

By decision dated August 14, 2006, the Office denied modification of the June 17, 2005 decision based on the lack of probative medical evidence.

Appellant requested reconsideration on August 13, 2007. She submitted an August 10, 2007 report from Dr. Daniel Koch, a psychologist, who stated that he initially treated appellant on June 24, 2005 for complaints of stress and depression. He reviewed appellant's medical history and stated that she was a chronic pain patient. Dr. Koch stated that appellant had a herniated disc and over time was apparently developing cervical strain problems as well.

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<sup>1</sup> The signature of the physician is illegible.

In a decision dated September 20, 2007, the Office denied modification of the August 14, 2006 decision as the medical evidence was insufficient to establish the claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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.<sup>4</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>5</sup> A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.<sup>6</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>7</sup>

### **ANALYSIS**

Appellant has identified activities in her federal employment such as lifting, bending, twisting, pushing and reaching as contributing to her back condition. It noted that she originally injured her back while lifting in December 1998, resulting in an L5-S1 herniated disc, with subsequent aggravations caused by her continuing work activities.<sup>8</sup> The burden of proof is on appellant to submit medical evidence that contains a complete and accurate background, a

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>4</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>5</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> Appellant referred to another claim filed, but the nature of the other claim is not clear from the record.

diagnosis and a rationalized medical opinion on causal relationship between the diagnosed condition and the identified employment factors.

The medical evidence of record is not sufficient to meet appellant's burden of proof. Neither Dr. Peterson, Dr. Semon, Dr. Koch nor any physician of record provides a rationalized medical opinion on the issue of causal relation. Dr. Peterson noted in September 2004 that he had treated appellant six years prior for a herniated disc, without discussing causal relationship with employment. As to work restrictions in 2005, he provided no diagnosis or opinion as to causal relationship with the identified employment factors. Dr. Koch reported appellant's history showed chronic back pain, without discussing the relevant orthopedic issues. None of the physicians provides a complete history discussing appellant's employment duties or provides an opinion with supporting medical rationale as to how her work caused or contributed to her claimed condition. The Board accordingly finds that appellant did not meet her burden of proof and the Office properly denied the claim for compensation.

**CONCLUSION**

Appellant did not meet her burden of proof to establish a back condition causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 20, 2007 is affirmed.

Issued: June 20, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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