



Appellant submitted treatment notes from Dr. Hugh O. Pearson, a family practitioner, dated November 17 and 29, 1999. Dr. Pearson indicated that appellant was treated and would be out of work for one week. In a February 1, 2000 work excuse slip, Dr. Thor Robert Rhodin, a Board-certified internist, advised that appellant would be off work from December 1, 1999 to February 22, 2000 due to back and leg pain. Appellant came under the treatment of Dr. Randolph C. Bishop, Board-certified in physical medicine and rehabilitation. In reports dated May 1 and 31, 2000, Dr. Bishop noted that appellant was under his care as of February 22, 2000 and would be off work until June 14, 2000.

Mr. Hill submitted a June 6, 2000 statement and indicated that appellant mentioned that he aggravated his back in November 1999, but did not believe the injury to be serious. He advised that on November 17, 1999 appellant was moving furniture to another facility and he noticed that appellant was wearing a back support belt. Appellant indicated that his back was bothering him and that he was going to seek medical treatment. Mr. Hill advised that appellant's job required him to move property and he could not definitively state whether his current back injury was work related.

In a letter dated June 26, 2000, the Office advised appellant of the evidence needed to establish his claim and requested that he submit such evidence within 30 days.

In statements dated July 18 and 19, 2000, appellant noted that he reported his back injury to his supervisor on the same day that it occurred. Mr. Hill inquired as to whether he was wearing his back belt and appellant responded affirmatively. Appellant delayed in seeking medical attention because he believed it was just a pulled muscle and would resolve. However, pain became worse and his symptoms persisted. Appellant sought medical treatment from Dr. Pearson on November 17, 1999. In a November 29, 1999 report, Dr. Pearson noted that appellant continued to have pain and developed paresthesias extending into the right thigh and knee with urge incontinence. In reports dated December 13, 1999 and January 25, 2000, he noted that appellant complained of paresthesias. In a December 3, 1999 report, Dr. Rhodin noted that appellant had an onset of back pain one to two weeks prior which caused numbness and weakness in his legs. He noted that his work duties included lifting property. Dr. Rhodin diagnosed low back pain with findings in the lower extremities consistent with myelopathy. In reports dated December 9 and 15, 1999, he noted that appellant's back pain had improved but he still experienced abnormal sensation and numbness in his legs. Dr. Rhodin diagnosed low back pain with abnormal findings in the lower extremity secondary to a ruptured disc or sprain. Reports dated January 11 to April 18 2000, noted improvement in appellant's back pain with abnormal sensation in the saddle distribution of his buttocks and peroneal area. Dr. Rhodin diagnosed improving low back pain with abnormal sensation in the saddle distribution.

Dr. Robb Snider, a Board-certified neurologist and psychiatrist, treated appellant for bilateral lower extremity paresthesias. Appellant reported awakening in mid November 1999 with right lower extremity numb paresthesias and back pain which progressed into the lower extremities, buttocks and perineum. Dr. Snider diagnosed progressive bilateral lower extremity paresthesias which was most pronounced over the saddle distribution with accompanying urinary urgency, constipation and sexual dysfunction. Dr. Rhodin noted that appellant underwent a T7-8 discectomy; however, he still had persistent sensory disturbances from his waist down. He diagnosed thoracic myelopathy and status post T7-8 discectomy and bilateral tardy ulnar palsies

and early right carpal tunnel syndrome. A February 3, 2000 magnetic resonance imaging (MRI) scan of the thoracic spine revealed an extruded disc fragment to the left at T7-8.

Appellant was seen in consultation with Dr. Stephen M. Scionti, a Board-certified urologist, on February 4, 2000. Dr. Scionti noted that appellant experienced back pain which commenced eight to nine months prior with intermittent paresthesias, numbness and altered sensation down both legs. He diagnosed spinal nerve root irritation causing bladder irritative symptoms such as urgency and paresthesias in the saddle region. On February 9, 2000 it was noted that appellant was a material handler who was injured at work on November 17, 1999 and experienced pain radiating from his thoracic region into his flank and lower extremities causing bowel and bladder dysfunction. Dr. Scionti diagnosed progressive thoracic myelopathy and recommended transthoracic discectomy.

In an operative report dated February 22, 2000, Dr. Bishop performed a transthoracic exposure of T7-8 vertebral bodies, discectomy at T7-8, allograft fusion, T7-8 and internal fixation at T7-8 and diagnosed T7-8 herniated disc.

In a decision dated July 28, 2000, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that his back condition was related to the November 10, 1999 incident.

On August 16, 2000 appellant requested an oral hearing before an Office hearing representative. The hearing was held on December 22, 2000. In an attending physician's report dated February 8, 2000, Dr. Bishop noted that on November 17, 1999 appellant sustained a thoracic disc herniation with radiculopathy. He noted with a checkmark yes that his condition was caused or aggravated by an employment activity.

By decision dated April 20, 2001, an Office hearing representative affirmed the July 28, 2000 decision finding that appellant failed to establish that he sustained an injury on November 10, 1999.

On June 21, 2001 appellant appealed to the Board. On October 22, 2002 the Director of the Office requested that the Board set aside the April 20, 2001 decision of the hearing representative and remand the case for further development. By order dated November 1, 2002, the Board granted the Director's motion.<sup>1</sup> It noted that appellant submitted additional medical evidence prior to the issuance of the hearing representative's decision that should have been considered by the Office.

In a report dated February 2, 2001, Dr. Bishop noted that appellant injured his back on November 17, 1999 while lifting equipment or computers when his symptoms began. Appellant opined that he sustained a herniated disc at T7-8 secondary to his lifting injury at his job site in November 1999.

In a decision dated December 31, 2002, the Office denied appellant's claim, finding that the medical evidence did not establish that the incidents, alleged to have caused the claimed

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<sup>1</sup> Docket No. 0-1780 (issued November 1, 2002).

injury, occurred as alleged. In a December 8, 2004 decision, the Office determined that the decision of December 31, 2002 had not been properly issued because appellant's authorized representative was not sent a copy. Therefore, the decision was reissued on December 8, 2004.

On December 5, 2005 appellant requested reconsideration. He asserted that Dr. Bishop's February 2, 2001 report established that he sustained a work-related lifting injury to his back. Appellant submitted an MRI scan of the lumbar spine dated December 1, 1999 which revealed broad diffuse disc bulging at L2-3, L3-4 and L4-5, annular tears at L2-3 and L3-4 and a broad central subligamentous disc protrusion noted at L5-S1.

By decision dated June 13, 2006, the Office denied modification of the prior decisions.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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 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

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

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

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

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

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 Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury on November 10, 1999. However, at the oral argument on December 12, 2007, the Director acknowledged that the lifting incident on or about November 10, 1999 when appellant moved computers while he was working.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a ruptured disc or other back condition on November 10, 1999. On November 17 and 29, 1999 Dr. Pearson indicated that appellant was treated and advised to remain at home for three to five days. He noted that appellant developed paresthesias extending into the right thigh and knee with urge incontinence. The report did not provide any history of the accepted lifting incident. Other reports dated December 13, 1999 and January 25, 2000 noted appellant's complaints of paresthesias. Dr. Pearson failed to provide a history of injury<sup>7</sup> and did not provide a rationalized opinion regarding any causal relationship between appellant's back condition and the lifting of computers on or about November 10, 1999.<sup>8</sup>

The December 3 to 28, 1999 reports of Dr. Rhodin noted that appellant did lifting at work and had an onset of back pain one to two weeks prior. He diagnosed low back pain with findings in the lower extremities consistent with myelopathy. In reports dated January 11 to April 18, 2000, Dr. Rhodin noted that appellant continued to experience abnormal sensation in the saddle distribution of his buttocks and peroneal area and diagnosed status post thoracic spine disc herniation with generalized abnormality of sensation in the lower extremities. However, his reports do not address the November 10, 1999 incident. Dr. Rhodin did not provide a rationalized opinion regarding the causal relationship between appellant's diagnosed thoracic spine disc herniation or myelopathy and the accepted lifting incident.<sup>9</sup> Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted a report from Dr. Bishop dated February 2, 2001. Dr. Bishop noted that appellant injured his back on November 17, 1999 while lifting equipment or computers at work. He opined that appellant sustained a herniated thoracic disc at T7-8 secondary to his lifting injury at his job site in November 1999 and based his conclusion on appellant's medical history, onset of symptomology, MRI scan and surgical findings. Although Dr. Bishop generally supported causal relationship, he did not provide adequate medical rationale explaining the basis of his stated conclusion regarding the causal relationship between appellant's T7-8 herniated

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<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> *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>8</sup> *Supra* note 6.

<sup>9</sup> *Id.*

nucleus pulposus condition and the factors of employment.<sup>10</sup> His reports failed to provide an accurate date of injury, noting that appellant injured his back on November 17, 1999, which is inconsistent with the accepted date of injury of November 10, 1999.<sup>11</sup> Moreover, Dr. Bishop's opinion on causal relation was made some 15 months following this lifting incident. This necessitates that he fortify his opinion on causal relationship.<sup>12</sup> Appellant submitted an attending physician's report prepared by Dr. Bishop dated February 8, 2000 who indicated that on November 17, 1999 appellant sustained a thoracic disc herniation with radiculopathy. Dr. Bishop noted with a checkmark yes that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>13</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The reports from Dr. Snider and Dr. Scionti noted treating appellant for bilateral lower extremity paresthesias and back pain. They diagnosed thoracic myelopathy and status post T7-8 discectomy, bilateral tardy ulnar palsies, early right carpal tunnel syndrome and spinal nerve root irritation. However, neither Dr. Snider nor Dr. Scionti provided any history of injury. They did not provide a rationalized opinion regarding the causal relationship between appellant's diagnosed conditions to the lifting he performed on about November 10, 1999.<sup>14</sup> The remainder of the medical evidence failed to provide any opinion on the causal relationship between appellant's job and his diagnosed conditions. For this reason, this evidence is not sufficient to meet appellant's 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.<sup>15</sup>

### CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back injury causally related to his November 1999 employment incident.<sup>16</sup>

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<sup>10</sup> See *Jimmie H. Duckett*, *supra* note 6.

<sup>11</sup> See *Frank Luis Rembisz*, *supra* note 7.

<sup>12</sup> See *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>13</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>14</sup> See *Jimmie H. Duckett*, *supra* note 6.

<sup>15</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>16</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2008  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board