

pulled by a motorized tug, which bumped into a trash cart that struck her in the stomach. Appellant stopped work immediately after the incident.

Appellant submitted several witness statements regarding the March 8, 2007 incident and medical evidence from Dr. Zoltan Csuka, a Board-certified internist. In a March 26, 2007 Form CA-17 duty status report, Dr. Csuka noted that on March 8, 2007 a motorized tug hit a trash cart which bumped appellant's stomach. He assessed low back pain and abdominal muscle pain and checked the box on the form which indicated that the history of injury given by the employee corresponded to the description of how the injury occurred. He completed a light-duty request form listing appellant's restrictions and a form required under the Family Medical Leave Act, indicating that she was being treated for back and abdominal muscle injuries from a March 8, 2007 work injury. Dr. Csuka advised that appellant should be able to return to light duty with restrictions after March 26, 2007 and would need continuing pain management.

Appellant returned to limited-duty work March 27, 2007. The Office handled appellant's claim administratively to allow for medical payments up to \$1,500.00.

Dr. Csuka submitted additional reports. On April 17 and May 15, 2007 he noted the date of injury as March 8, 2007 and assessed low back pain. Subsequent reports dated August 15, 2007, reported the history of injury and diagnosis.¹

In an August 23, 2007 letter, the employing establishment controverted appellant's claim.²

By letter dated September 14, 2007, the Office informed appellant that her claim was reopened to determine the nature and extent of her injuries from the March 8, 2007 work injury. It advised appellant to submit a medical report with a diagnosis and a rationalized medical opinion as to the cause of any diagnosed condition, including any aggravation of preexisting degenerative disc disease.

On September 11, 2007 Dr. Csuka noted the date of injury and provided an assessment of low back pain. He again checked a box on the form that the history of injury given by the employee was consistent with the description of the injury.

By decision dated October 23, 2007, the Office denied appellant's claim. It found that the record did not contain a rationalized medical opinion explaining the causal relationship between any diagnosed condition and the accepted March 8, 2007 work incident. The Office further noted that the diagnosis of pain was not compensable to support total disability from work.

On November 1, 2007 appellant requested reconsideration. In an October 9, 2007 duty status report, Dr. Csuka noted the date of injury and provided an assessment of low back pain.

¹ The May 15, 2007 description of injury advised "tug pushed her against wall."

² It also offered appellant a limited-duty assignment, which she accepted on August 29, 2007.

He checked the box on the form that the history of injury given by the employee corresponded to the description of the injury.

In an October 24, 2007 report, Dr. Csuka noted the history of injury and advised that appellant had lower back pain. He noted that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc disease at multiple levels and a slipped disc. He opined that appellant had some underlying back problems that were aggravated by the employment injury. Dr. Csuka stated that appellant's symptoms had become chronic and that she sustained a long-term disabling injury at her employment.

By decision dated November 28, 2007, the Office denied appellant's reconsideration request without performing a merit review. It did not indicate that it had reviewed Dr. Csuka's October 24, 2007 report.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

⁸ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

claimant⁹ and must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS -- ISSUE 1

The record establishes that on March 8, 2007 appellant was struck in the stomach by a trash cart after a motorized tug had bumped it. The Board finds that the incident occurred as alleged. The medical evidence, however, does not provide a rationalized medical opinion addressing the causal relationship between appellant's abdominal and back conditions, including degenerative disc disease and the March 8, 2007 work incident.

In support of her claim, appellant submitted numerous form reports from Dr. Csuka. On March 26, 2007 Dr. Csuka indicated that appellant was being treated for back and abdominal muscle following the March 8, 2007 work injury and required restrictions upon her return to work. However, he did not provide a firm medical diagnosis or adequately address how appellant's medical conditions caused disability due to the work incident.¹² Dr. Csuka listed back and abdominal injuries from the work incident, but did not provide medical rationale explaining how the employment incident caused or aggravated a particular diagnosed condition. In the March 26, 2007 duty status report, he provided an assessment of low back pain and abdominal pain. Dr. Csuka noted a proper history of injury and indicated with a check mark that the history of injury given by appellant corresponded to the description of how the injury occurred. However, he did not further explain how or why the employment incident caused or contributed to a diagnosed condition. A report which only addresses causal relationship with a checkmark, without more by way of medical rationale explaining how the incident caused the injury, is of diminished probative value.¹³ The diagnosis of pain, alone, does not constitute the basis for payment of compensation.¹⁴

The additional firm reports submitted by Dr. Csuka listed low back pain and degenerative disc disease. However, they are similarly deficient in addressing the issues of causal relationship and disability for work. Dr. Csuka failed to provide an opinion supported by objective findings on examination pertaining to appellant's degenerative disc disease or how it was related to the March 8, 2007 work incident.¹⁵

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *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).

¹³ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁴ *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ *See Jimmie H. Duckett*, *supra* note 12.

There is insufficient rationalized evidence in the record to establish appellant's claim. The Office advised appellant of the evidence required to establish her claim. However, she failed to submit a probative narrative medical report addressing causal relation. The Office properly denied her claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in using this discretion.¹⁶ The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”¹⁷

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁸ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁹

The Act provides that the Office shall determine findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that the Office address all evidence relevant to that subject matter which was properly submitted to the Office prior to

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ *Id.*

¹⁸ *Id.* at § 10.608(b).

¹⁹ *Annette Louise*, 54 ECAB 783 (2003).

the time of issuance of its final decision.²⁰ The Board has held that this principal applies with equal force when evidence is received by the Office the same day a final decision is issued.²¹

ANALYSIS -- ISSUE 2

Appellant submitted an October 9, 2007 duty status report and an October 24, 2007 report from Dr. Csuka, which was received by the Office on November 28, 2007, the same day it issued the decision denying appellant's request for reconsideration. There is no evidence that the Office considered this report prior to issuing its November 28, 2007 decision. The Board finds that medical evidence related to appellant's claim was received but not reviewed by the Office prior to its denial of her request for reconsideration. As noted, the Board's decisions are final as to the subject matter appealed and it is crucial that the Office review all newly received evidence relevant to that subject matter prior to the time of issuance of its final decision. Therefore, in accordance with Board precedent,²² the case will be remanded for a proper review of the evidence and an appropriate final decision on appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty. The Board also finds that the case is not in posture for a decision regarding the Office's denial of appellant's reconsideration request and that the case must be remanded for further review of the evidence and issuance of an appropriate final decision.

²⁰ *William A. Couch*, 41 ECAB 548 (1990).

²¹ *Linda Johnson*, 45 ECAB 439 (1994).

²² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2007 is set aside and remanded for further action consistent with this decision and the October 23, 2007 decision is affirmed.

Issued: October 21, 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