



container].” She did not stop work, returning to a light-duty position on March 11, 1998. The Office did not issue a formal decision on the claim at that time. On September 9, 2005 appellant filed a recurrence of disability claim (Form CA-2a) identifying the date of original injury as March 10, 1998. She stated that her back condition had deteriorated due to prolonged sitting and standing. Appellant identified the date of recurrence as August 31, 2005 and stated that it happened while she was repairing torn mail. According to her, her job aggravated her original injury.

Appellant submitted medical evidence regarding her treatment in 1998 from Dr. Barry Wahner, a chiropractor. In a March 14, 1998 report, Dr. Wahner diagnosed sacroiliac joint sprain, lumbar sprain/strain, muscle spasms and spinal joint subluxations. He did not indicate whether x-rays were taken. In a June 5, 1998 report, Dr. Wahner reported “motion palpation” and revealed subluxations at L2-3. He stated that appellant could work without restrictions.

In a duty status report dated March 14, 2005, Dr. Bruce Williams, an osteopath, diagnosed a herniated disc. He reported a date of injury of May 17, 1999 and stated that appellant was pushing a container when a wheel came off. In an attending physician’s report (Form CA-20) dated September 23, 2005, Dr. Williams diagnosed a herniated disc and reported the date of injury as August 30, 2005. By narrative report dated October 11, 2005, he stated that appellant had been off work since August 31, 2005, her current diagnosis was minimal osteoarthritis L5-S1, repetitive strain of the lumbar spine secondary to job duties, and her previous diagnosis was herniated disc L5-S1 with stenosis.

In a report dated January 10, 2006, Dr. Williams stated that appellant suffered from a “work-related injury which was initially sustained on March 10, 1998.” He stated that the injury resulted in a herniated disc at L5-S1, which was confirmed by magnetic resonance imaging (MRI) scans on May 28, 2002 and September 3, 2004. Dr. Williams opined that appellant’s injuries were a direct result of the March 10, 1998 accident, based on the initial history provided by appellant and findings on physical examination.

By decision dated March 6, 2006, the Office denied the claim for compensation for a traumatic injury on March 10, 1998. It found that an incident occurred on March 10, 1998, but there was insufficient medical evidence to establish a diagnosed condition causally related to the employment incident.

Appellant requested reconsideration on March 20, 2006. By decision dated May 12, 2006, the Office determined merit review of the case was unwarranted. Appellant again requested reconsideration on May 19, 2006. In a report dated August 22, 2006, Dr. R. Bruce Heppenstall, an orthopedic surgeon, who stated that he originally treated appellant on June 4, 2002 following a work accident in 1998 when she was pushing a container and felt back pain. He indicated that he saw appellant again on September 20, 2005 with complaints of back pain since August 30, 2005. Dr. Heppenstall noted an MRI scan in December 2005 showed the size of extruded disc material had increased since a September 2004 MRI scan.

By decision dated October 6, 2006, the Office reviewed the case on its merits and denied modification. Appellant again requested reconsideration on April 12, 2007. In a report dated June 1, 2006, Dr. Williams again stated that appellant was injured in a work-related accident on

March 10, 1998. He reported that appellant's symptoms became progressively worse. Dr. Williams diagnosed L5 herniated disc and opined that appellant's injuries were the direct result of the March 10, 1998 employment incident.

In a report dated September 27, 2006, Dr. Heppenstall stated that appellant had two work-related injuries, the first in 1998 when she experienced low back pain and left sciatica, and then on August 30, 2005 she had another injury. He noted that an MRI scan in September 2004 showed a herniated disc, with a December 2005 MRI scan showing an increase in the herniation. Dr. Heppenstall stated that both of these injuries were the direct cause of the L5 herniated disc requiring surgery.

By decision dated April 30, 2007, the Office reviewed the merits of the case and denied modification. It found the medical evidence did not provide a rationalized medical opinion on the issue presented.

On August 22, 2007 appellant requested reconsideration of the claim. She submitted a May 2, 2007 report from Dr. Heppenstall who again stated that appellant initially hurt her back on March 10, 1998 and continued to have symptoms until another injury on August 30, 2005. Dr. Heppenstall opined that both of these injuries were the cause of the herniated disc.

By decision dated October 30, 2007, the Office found the application for reconsideration insufficient to warrant merit review. The Office found the report from Dr. Heppenstall was similar to previous reports submitted.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>3</sup>

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.<sup>4</sup> In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

<sup>3</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>5</sup>

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed a claim for a back injury in the performance of duty on March 10, 1998.<sup>7</sup> The Office accepted that a March 10, 1998 employment incident occurred as alleged. The only issue presented in this case is whether the medical evidence is sufficient to establish a diagnosed condition causally related to the March 10, 1998 employment incident, in which appellant stated that she was lifting heavy mail from an APC. The initial treatment was provided by a chiropractor, Dr. Wahner, whose reports constitute medical evidence only to the extent that he diagnosed a subluxation as demonstrated by x-ray.<sup>8</sup> While Dr. Wahner noted subluxations, he did not indicate that the diagnosis was based on x-rays. His June 5, 1998 report indicated that the diagnosis was based on motion palpation. Accordingly, the Board finds that Dr. Wahner is not a physician under the Act.

Appellant submitted reports from Dr. Williams, an osteopath, commencing in 2005. In an October 11, 2005 report, Dr. Williams referred to repetitive strains caused by job duties. The issue of an injury based on repetitive job duties is not before the Board. In reports dated January 10 and June 1, 2006, Dr. Williams opined that appellant had sustained an injury that result in an L5-S1 herniated disc. He did not provide a clear description of the March 10, 1998 employment incident, did not discuss the contemporaneous medical evidence or the continuing medical history. Dr. Williams did not provide any medical rationale to explain why he believed a herniated disc, which apparently was initially diagnosed either in May 2002 or

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<sup>5</sup> *Id.*

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>7</sup> To the extent appellant may be claiming an injury from a new incident on August 30, 2005, that issue is not before the Board as the Office's merit decisions on appeal addressed only the issue of an injury on March 10, 1998.

<sup>8</sup> *See Jack B. Wood*, 40 ECAB 95, 109 (1988); 5 U.S.C. § 8101(2) (a physician includes chiropractors only to the extent of treatment to correct a subluxation as demonstrated by x-ray to exist).

September 2004,<sup>9</sup> was causally related to a March 10, 1998 employment incident. He did not provide a rationalized medical opinion based on a complete and accurate background.

Dr. Heppenstall also failed to provide a rationalized medical opinion. He briefly referred to “pushing a container” without providing a detailed history of injury. Dr. Heppenstall did not provide a complete medical history or provide medical rationale for an opinion that a herniated disc was causally related to a March 10, 1998 employment incident. His opinion is of diminished probative value to the issue presented.

As noted above, it is appellant’s burden of proof to submit the medical evidence necessary to establish the claim. Since the record does contain a rationalized medical opinion based on a complete and accurate factual and medical background, appellant did not meet her burden of proof in this case.

### **LEGAL PRECEDENT -- ISSUE 2**

The Federal Employees’ Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.<sup>10</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”<sup>11</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.<sup>12</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

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<sup>9</sup> Dr. Williams referred to a May 28, 2002 MRI scan, without further discussion. Dr. Heppenstall reported that in June 2002 he recommended an MRI scan, but he did not discuss the results.

<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.605 (1999).

<sup>12</sup> *Id.* at § 10.606(b)(2).

<sup>13</sup> *Id.* at § 10.608.

## ANALYSIS -- ISSUE 2

The underlying merit issue in the case is a medical issue regarding causal relationship between a diagnosed condition and the March 10, 1998 employment incident. Appellant did submit a new medical report from Dr. Heppenstall, but his May 2, 2007 report reiterates the same opinion as he had previously offered in his September 27, 2006 report. Dr. Heppenstall did not provide any additional relevant and pertinent information to the causal relationship issue. The submission of new medical reports does not in itself require reopening the claim for merit review.<sup>14</sup> The evidence must provide new and relevant evidence on the particular issue involved in the case.<sup>15</sup> The Board finds appellant did not submit relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. The application for reconsideration did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). In accord with 20 C.F.R. § 10.608, the Office properly declined to review the merits of the claim.

## CONCLUSION

Appellant did not submit sufficient medical evidence to establish an injury in the performance of duty on March 10, 1998. On reconsideration, appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly declined to review the merits of the claim.

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<sup>14</sup> See *Kevin M. Fatzer*, 51 ECAB 407 (2000).

<sup>15</sup> *Richard L. Ballard*, 44 ECAB 146 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 30 and April 30, 2007 are affirmed.

Issued: October 21, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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