



claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to the cause of his diagnosed condition.

Appellant submitted reports from Dr. W. Curtis Worthington, a Board-certified neurosurgeon, dated May 22 to July 6, 2007. On May 22, 2007 Dr. Worthington stated that appellant had been experiencing low back pain for four to five weeks. He indicated that, after doing something strenuous, appellant had an onset of pain, which worsened several weeks later and lateralized to his right side in the flank, radiating down the hip and leg into the anterior thigh and down into the right leg. Dr. Worthington opined that appellant had sustained a herniated disc with a far lateral component at L4-5 to the right side, with an L4 radiculopathy due to the exiting L4 nerve root. On June 12, 2007 he related appellant's complaints of continuing pain in the right L5 distribution, and recommended that he remain off work.

On July 2, 2007 Dr. Worthington noted continuing extreme back and hip pain, which continued to affect largely the anterolateral thigh. A magnetic resonance imaging (MRI) scan revealed some degree of herniation at L5-S1, and a far lateral disc herniation at L4-5. He recommended an L4-5 right-sided hemilaminectomy and major foraminotomy far lateral disc removal. On July 6, 2007 Dr. Worthington performed a right L4-5 hemilaminectomy and excision of a herniated intravertebral disc with removal of free fragment from neuralforamen L4 foraminotomy and micro dissection. His postoperative diagnosis was L4 radiculopathy secondary to far lateral L4-5 disc herniation. In a July 6, 2007 hospital discharge summary, Dr. Worthington provided a history of injury, indicating that appellant had experienced a sudden onset of right leg pain, suggesting L4 radiculopathy. His final diagnosis was lumbar radiculopathy. The record contains a June 12, 2007 report of an electromyography (EMG) assessment of the right lower extremity. The study was essentially within normal limits.

In a decision dated October 2, 2007, the Office denied appellant's claim on the grounds that he had not established a causal relationship between his diagnosed low back condition and his identified employment activities.

On October 26, 2007 appellant, through his representative, requested an oral hearing, which was held on March 14, 2008. At the hearing, his representative contended that the medical evidence was sufficient to establish that appellant's employment activities caused his diagnosed condition. The hearing representative held the record open for 30 days for the submission of additional evidence.

In a December 12, 2007 report, Dr. Worthington stated that appellant had an acute disc herniation at L4-5 for which he underwent a standard lumbar laminectomy and discectomy. He noted that he was not qualified to answer questions regarding the cause of appellant's condition, and recommended an evaluation by a specialist in physical medicine and rehabilitation.

On February 12, 2008 Dr. Worthington advised that, while he believed the kind of work appellant performed contributed to his back condition, he was unable to isolate a specific incident that would have caused the disc herniation. He stated:

“I think that work certainly did contribute to a predisposition to having back problems, but at the same time we cannot say specifically that an event at work or a specific thing at work caused this to happen, and there may have been other factors in his lifestyle that could also have contributed. So, I think I am not the best person to help him with this particular issue.”

In a report dated March 10, 2008, Dr. George Khoury, a Board-certified neurosurgeon, diagnosed post lumbar disc removal. He obtained a history of injury reflecting that appellant experienced a “sudden jolt” to his back when he fell down while walking out of a building. On examination, Dr. Khoury was unable to detect any focal neurological deficit, except for some numbness in the right foot. He stated that appellant’s lumbar condition “probably could be related to him carrying the mail and slipping off a step,” although he noted that this history of injury was not documented by notes from his treating physician. Dr. Khoury advised that disc herniations can have a variety of causes and that appellant’s “explanation certainly could be one that explains it.”

Appellant submitted a March 11, 2008 statement from Kevin Josiger, a coworker, who noted that appellant complained of persistent back pain and numbness in his legs in January 2007. He opined that appellant’s job could be a contributing factor to a back injury. On March 13, 2008 Bob Block, a mailroom supervisor, stated that appellant was in “major pain” during late March and early April 2007.

In a statement dated March 12, 2008, appellant indicated that he had worked for the employing establishment since 1983, and that, due to staff shortages, he had worked six days per week for the past two years. At the time he injured his back, he did not realize that “something actually happened to [his] back.” He first realized that he had been injured a few days later when the pain became so unbearable that he had to seek medical help. Appellant had no doubt that his back injury was a result of his job.

In a letter dated May 8, 2008, appellant’s representative argued that the medical evidence was sufficient to establish a causal relationship between appellant’s employment activities and his back condition. He contended that, at a minimum, appellant had established a *prima facie* case, warranting further development of the medical evidence by the Office.

By decision dated May 27, 2008, the Office hearing representative affirmed the October 2, 2007 decision on the grounds that appellant had failed to provide sufficient medical evidence explaining how his federal employment duties caused his claimed back condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including the fact that an injury was

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged,<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

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 the 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> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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>

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.<sup>6</sup>

### ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that his back condition or need for surgery was caused or aggravated by factors of his federal employment. Therefore, he has failed to meet his burden of proof to establish his occupational disease claim.

The record contains numerous reports from Dr. Worthington, appellant's treating physician. However, Dr. Worthington did not provide a rationalized medical opinion, based upon an accurate factual background, explaining the causal relationship between appellant's employment activities and his diagnosed condition.

Following initial consultation on May 22, 2007, Dr. Worthington stated that, after doing something strenuous, appellant experienced an onset of pain, which worsened over a period of

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<sup>2</sup> *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2008) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>6</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

four to five weeks. The pain was lateralized to his right side in the flank radiating down the hip and leg into the anterior thigh and down into the right leg. He opined that appellant had sustained a herniated disc, with an L4 radiculopathy, due to the exiting L4 nerve root. On June 12, 2007, he related appellant's complaints of pain in the right L5 distribution and recommended that he remain off work. On July 2, 2007 Dr. Worthington reviewed a report of an MRI scan, which revealed some degree of herniation at L5-S1, and a far lateral disc herniation at L4-5. He performed surgery on July 6, 2007. Thereafter, Dr. Worthington noted a diagnosis of L4 radiculopathy secondary to far lateral L4-5 disc herniation, and provided a history of injury, stating that appellant experienced a sudden onset of right leg pain, suggesting L4 radiculopathy. None of these reports contain an opinion as to how any factor of appellant's duties as a letter carrier caused or contributed to the herniated disc or need for surgery. The Board has long held that medical evidence that does not offer any opinion on the cause of a claimant's condition is of limited probative value.<sup>7</sup> Dr. Worthington did not describe or otherwise address appellant's various job activities. Rather, the history of injury he related noted only that appellant experienced a single traumatic event after "doing something strenuous." Dr. Worthington did not record whether such strenuous event occurred while appellant was at work. The Board notes that neither appellant nor his physicians have identified any job activities, or an incident occurring at a specific time, place or in the manner alleged, which caused or contributed to his claimed condition.

In a December 12, 2007 report, Dr. Worthington reiterated that appellant had an acute disc herniation at L4-5. He advised, however, that he was not qualified to answer questions regarding the cause of appellant's condition and recommended an evaluation by a specialist in physical medicine and rehabilitation. As the report does not contain an opinion on causal relation, it is of diminished probative value.<sup>8</sup>

On February 12, 2008 Dr. Worthington noted that, while he believed the kind of work appellant performed contributed to his back condition, he was unable to isolate a specific incident that would have caused the disc herniation. He speculated that there may have been other factors in appellant's lifestyle that could also have contributed to his back condition and again declined to offer a definitive opinion. While the opinion of a physician supporting causal relationship need not be of absolute medical certainty, the opinion must not be speculative or equivocal, and should be expressed in terms of a reasonable degree of medical certainty.<sup>9</sup> As Dr. Worthington's opinion on causal relationship is vague, it is of limited probative value. Again, he did not describe appellant's job duties or explain the medical process through which such duties would have been competent to cause a herniated lumbar disc condition. Medical conclusions unsupported by rationale are of little probative value.<sup>10</sup> For all of these reasons, his report is of diminished probative value.

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<sup>7</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>8</sup> *Id.*

<sup>9</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384 (1960).

<sup>10</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

Dr. Khoury diagnosed post lumbar disc removal and provided a history of injury reflecting that appellant experienced a “sudden jolt” to his back when he fell down while walking out of a building. On examination, Dr. Khoury was unable to detect any focal neurological deficit, except for some numbness in the right foot. He stated that appellant’s lumbar condition “probably could be related to him carrying the mail and slipping off a step,” although he acknowledged that this history of injury was not documented in the notes of Dr. Worthington. He indicated that disc herniations can have a variety of causes and that appellant’s “explanation certainly could be one that explains it.” Dr. Khoury did not express a definite opinion as to the cause of appellant’s back condition. On the contrary, he pointed out that he had no actual knowledge as to the causative event, or events, which led to the herniated disc. He speculated that appellant’s alleged work activity might have caused his disc herniation. Accordingly, Dr. Khoury’s opinion is of limited probative value.

A coworker opined that appellant’s job activities could be responsible for his back condition. However, the Board has held that lay individuals are not competent to render medical opinions.<sup>11</sup> Therefore, the statement is of no probative value. MRI and EMG reports, which do not contain an opinion on causal relationship, do not constitute probative medical evidence.

Appellant expressed his belief that his back condition resulted from his duties as a mail carrier. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>12</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant’s responsibility to submit. Therefore, appellant’s belief that his condition was caused by conditions of employment is not determinative.

As there is no probative, rationalized medical evidence addressing how appellant’s claimed conditions were caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

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<sup>11</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>12</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 27, 2008 and October 2, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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