

conditions and had not returned to full duty since 1994, controverted her claim. In a separate statement, Supervisor Patrick Goreman stated that appellant had not cased mail since August 9, 2004.

In support of her claim, appellant submitted an undated and unsigned personal statement, an April 4, 2005 letter signed by Dr. William S. Lewis, a Board-certified orthopedic surgeon, and a duty status report (Form CA-17) dated May 2, 2005.

Dr. Lewis reported that he first saw appellant after she sustained her work-related injury on February 7, 1994. He noted that his initial diagnosis was contusion of the cervical spine, contusion of the lumbar spine and cerebral concussion. These diagnoses were approved by the Office and appellant was placed in a light-duty position. Dr. Lewis stated that appellant's diagnoses progressed to herniated lumbar disc with radiculopathy and herniated cervical disc with radiculopathy. He asserted that these diagnoses were supported by the magnetic resonance imaging (MRI) scan examinations. Dr. Lewis opined that the repetitive motions of reaching, lifting and bending, which were part of her "light-duty position," put undo stress on appellant's cervical and lumbar spine. He opined that appellant's present job had contributed to the deterioration of her condition, which, he noted, is deteriorating with time.

Appellant submitted no additional evidence in support of her claim and by letter dated April 15, 2005 the Office notified appellant that the evidence of record was insufficient to support her claim.

Responding to this letter, appellant submitted a personal note, dated May 8, 2005 containing details of her condition. She reported that she was injured on February 7, 1994 while delivering mail and sustained injuries to her cervical spine. Appellant returned to work on September 1994, in a limited-duty capacity. She stated that she has an accepted condition of contusion of the cervical and lumbar spine and that, under this accepted condition, she continued working under light duty with restrictions because her physician, Dr. Lewis, thought that increased activity would cause additional harm. Appellant reported that her diagnosed condition changed to include herniation and radiculopathy, and thus, on April 7, 2005 she filed a Form CA-2 to reflect the newly diagnosed herniations and radiculopathy. She alleged that the repetitive motions and stress associated with her limited-duty position aggravated her accepted condition over time such that she now believes she has a new condition, as evidenced by this new diagnosis of herniation and radiculopathy.

By decision dated July 6, 2005, the Office denied appellant's claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

Appellant disagreed and requested an oral hearing.

By medical report dated July 25, 2005, Dr. Lewis diagnosed appellant with: cervical radiculopathy, C6-7, herniated cervical disc, C6-7 and lumbar radiculopathy. He reported that an MRI scan conducted March 2, 2003 of the lumbar spine was consistent with the above-stated diagnosis and the discal origin of this as a cause.

A hearing was conducted on February 28, 2007. Appellant testified that her original injury occurred in 1994. She said it was winter and, while delivering mail, she fell and hurt her back. Since that date, appellant alleged that her life at the employing establishment has been hell because the postmaster there has made it his personal vendetta to punish her for getting injured on the job. She reported that on June 28, 2000 after being verbally harassed on the workroom floor, she suffered a heart attack and was in intensive care and the hospital for five days. Appellant stated that her herniated disc condition was not immediately diagnosed because; at the time of her original injury she was pregnant and could not have x-rays. She reported that she is in pain.

Appellant submitted a March 12, 2007 medical report from Dr. Lewis, who reported that he first saw appellant following her work-related injury on February 7, 1994, when he diagnosed her with contusion of the cervical spine, contusion of the lumbar spine and cerebral contusion. Dr. Lewis noted that the Office accepted these diagnoses. He stated that as time passed, the conditions of appellant's employment were such that she developed cervical disc herniation with radiculopathy and lumbar herniated disc with radiculopathy. Dr. Lewis asserted that these diagnoses were directly related to conditions of appellant's employment. He also stated that the five page narrative of appellant's work conditions in 2000 clearly showed that the repetitive motion of her job caused herniations and radiculopathy to occur. Dr. Lewis cited employment activities such as the constant turning from side to side and raising her arms to either the front, left or right side, as factors that caused considerable and constant strain on her lumbar and cervical spine. He noted that activities that were done over and over again in a repetitive motion, which is what most of appellant's job duties, caused stress and increased pressure on her lower back. Further, standing for most of the four-hour workday aggravated appellant's condition. Dr. Lewis also asserted that reaching into a bucket to lift mail hundreds of times a day and turning to case it further irritated her neck and back, causing chronic pain. Finally, he asserted that long periods of lifting or pulling objects, frequent bending or twisting, and repetitive motion were all activities performed by appellant on a daily basis which clearly demonstrated a medical rationalization for the diagnosis of herniated disc with radiculopathy of both the lumbar and cervical spine.

By decision dated April 24, 2007, the Office's hearing representative affirmed the Office's July 6, 2005 decision. While the hearing representative found that appellant had established that she sustained a medical condition in the place, time and manner alleged, the evidence of record was insufficient to establish that the medical condition was causally related to identified employment factors.

By letter dated April 20, 2008, appellant requested reconsideration.

In support of her reconsideration request, appellant submitted an April 14, 2008 medical note from Dr. Lewis, who noted that appellant was originally diagnosed with contusion of the cervical spine, contusion of the lumbar spine and cerebral contusion. Dr. Lewis asserted that these diagnoses were well documented in his office records. He stated that as the symptoms progressed and began to clarify themselves, they became a full blown cervical and lumbar radiculopathy. Dr. Lewis asserted that these diagnoses were consistent with physical findings, subjective complaints and specific special studies including MRI scan examinations of April 13, 1995 of the cervical and lumbar spine, which revealed herniations at C6-7, L4-5 and L5-S1. He

also noted that MRI scans conducted February 25, 2008 of appellant's cervical and lumbar spine were consistent with the present diagnostic findings, treatment and prognosis.

In a February 25, 2008 medical report, Dr. Gerald J. Muro, a Board-certified diagnostic radiologist, reported findings following an MRI scan of appellant's cervical and lumbar spine. He noted that at the C4-5 and C5-6 levels there was minimal spondylotic ridging. Dr. Muro also observed mild facet joint degenerative changes resulting in mild foraminal narrowing at both levels. He observed at the L5-S1 level there was a very small central disc protrusion. Dr. Muro noted there was no associated thecal sac abnormality or nerve root compression but there were mild facet joint degenerative changes at this level. He diagnosed appellant with small central disc protrusions at L4-5 and L5-S1 and mild degenerative changes at C4-5 and C5-6.

Appellant submitted a March 28, 2003 medical report signed by Dr. Joseph Gagliardi, a Board-certified diagnostic radiologist, reporting findings from an MRI scan of appellant's cervical spine. Dr. Gagliardi reported that there was some disc space narrowing present at C5-6 and C6-7 with small osteophytes. Further, he noted the presence of a very subtle central herniation at C6-7 level with only minimal encroachment to the ventral subarachnoid space. Dr. Gagliardi also noted that the other disc spaces demonstrated no evidence of disc bulging or herniation. He diagnosed appellant with very subtle central herniation, identified at C6-7, with degenerative changes.

Appellant submitted a May 29, 2003 medical report in which Dr. Patrick P. Mastrolanni, Board-certified neurosurgeon, reported that cervical and lumbar pain films as well as a cervical MRI scan revealed significant disc disease at C6-7 and at L4-5, and slightly at L5-S1. Dr. Mastrolanni noted observing no nerve compression but that appellant clearly had radicular symptoms in the C7 nerve root on both sides and perhaps in L5 in the left leg. He also noted that appellant had tenderness in the medial aspect of the arch of the left foot that could be evidence of a bone spur in that region.

By decision dated July 18, 2008, the Office denied modification of its April 24, 2007 decision because the evidence of record was insufficient to establish causal relationship between appellant's claimed condition and her federal employment.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.²

ANALYSIS

The Board finds this case is not in a posture for decision and must be remanded for further development.³

In the instant case, appellant has alleged that as of February 1, 2000 she was aware that factors of her employment, including sorting and casing mail, caused her herniated cervical and lumbar disc conditions. Although the employing establishment noted that she no longer performed these duties after August 9 2004, it is undisputed that she did perform these duties between 1994 and 2004. In denying this claim, it has essentially determined that appellant has not established that her current conditions were consequential to her previous 1994 injury. However the Office has not properly developed this occupational disease claim to determine whether her work duties between 1994 and 2004 caused her currently diagnosed conditions.

Appellant filed an occupational disease claim for herniated cervical and lumbar discs with radiculopathy which she attributed to the employment-related task of casing mail. In his April 4, 2005 letter, Dr. Lewis reported that he first saw appellant after she sustained her work-related injury on February 7, 1994. He noted that his initial diagnosis was contusion of the cervical spine, contusion of the lumbar spine and cerebral contusion. These diagnoses were approved by the Office and appellant was placed in a light-duty position. Dr. Lewis stated that appellant's diagnoses progressed to herniated lumbar disc with radiculopathy and herniated cervical disc with radiculopathy. He asserted that these diagnoses were supported by the MRI scan examinations. Dr. Lewis opined that the repetitive motions of reaching, lifting and bending, which were part of appellant's "light-duty" position, put undo stress on her cervical and lumbar spine. He opined that appellant's present job had contributed to the deterioration of her condition, which, he noted, is deteriorating with time.

The Board finds that the case is not in posture of decision with respect to whether appellant sustained the diagnosed conditions, herniated lumbar disc with radiculopathy and herniated cervical disc with radiculopathy, or any other disability as a result of her work factors since the 1994 employment-related injury.

While the medical evidence of record does not provide sufficient medical rationale to meet appellant's burden of proof, the reports from Dr. Lewis raise an uncontroverted inference of causal relationship between her cervical and lumbar conditions and her work factors and, therefore, are sufficient to require further development of the case record by the Office. It is

² *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *See John J. Carlone*, 41 ECAB 354 (1989).

clear that Dr. Lewis believes that appellant's specific work duties did cause appellant's current diagnosed conditions.

It is well established that proceedings under the Act⁴ are not adversarial in nature⁵ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ It has an obligation to see that justice is done.⁷ And where, as here, an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information.

On remand, the Office should further develop the medical evidence by requesting a second opinion examination and opinion as to whether appellant's herniated lumbar disc with radiculopathy and herniated cervical disc with radiculopathy were causally related to her employment duties. After such development of the case record as it deems necessary, a *de novo* decision shall be issued.

Accordingly, the July 18, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings in accordance with this decision.

CONCLUSION

The Board finds the case is not in a posture for decision and must be remanded for further evidentiary development.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

⁷ *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings in accordance with this decision.

Issued: August 10, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board