



when her head was struck by the van trunk lid but she developed a headache that evening. There was no swelling or bruising. A computerized tomography (CT) scan report dated June 21, 2005 revealed a normal brain scan. In a June 20, 2005 disability certificate, a physician indicated that appellant had a headache but could return to work on June 21, 2005. Continuation of pay was provided for June 9 to August 22, 2005. She filed a compensation claim for disability beginning August 23, 2005. The Office accepted her claim for contusions of the face, neck and scalp. On August 12, 2005 it expanded her claim to include neck and lumbar spine sprains and strains.

On July 27, 2005 Dr. Joseph L. Faison, appellant's attending family practitioner, indicated that appellant was totally disabled due to post-traumatic headaches. Several clinical notes indicated a diagnosis of post-traumatic headaches.

In an August 22, 2005 magnetic resonance imaging (MRI) scan report, Dr. Raymond E. Tipton, a radiologist, noted that appellant had a mild annular disc protrusion and desiccation at L4-5 that was consistent with chronic degenerative disc disease, possibly related to marked obesity. Dr. Tipton also noted subcutaneous edema suggesting hypoproteinemia or heart failure. MRI scans of the cervical spine and brain were normal.

An October 24, 2005 disability certificate from Dr. Faison indicated that appellant was disabled from September 22, 2005 to January 22, 2006.<sup>1</sup> In an October 27, 2005 report, he diagnosed post-traumatic headaches and a myofascial injury of the cervical spine.

On November 10, 2005 the Office asked Dr. Faison for an explanation as to how appellant's disability beginning August 23, 2005 or her disc protrusion at L4-5 diagnosed August 22, 2005 was causally related to her June 7, 2005 employment injury. In an undated report received by the Office on November 14, 2005, Dr. Faison indicated that appellant was disabled beginning September 12, 2005 due to a post-traumatic headache. He indicated by checking "no" that the headache was not caused or aggravated by an employment activity.

By decision dated November 22, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that her disability beginning August 23, 2005 was causally related to her June 7, 2005 employment injury.

On January 23, 2006 Dr. Faison changed appellant's diagnosis to a disc protrusion in her lumbosacral spine but did not submit a narrative report containing medical rationale on the issue of causal relationship. In a June 25, 2006 report, he stated that he first saw appellant on July 12, 2005 for severe headaches and cervical and lumbar spine pain. On physical examination, appellant had severe and diffuse cervical and lumbosacral muscle spasm. Straight leg rising was positive at 23 degrees bilaterally. Dr. Faison noted that an August 22, 2005 MRI scan revealed a disc protrusion at L4-5. He diagnosed a traumatic disc protrusion at L4-5, traumatic myofascial injury of her cervical spine and post-traumatic headaches. Dr. Faison stated his opinion that appellant's disc protrusion was caused by her traumatic employment injury on June 7, 2005.

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<sup>1</sup> Dr. Faison initially stated that appellant was disabled from September 12 to 28, 2005 but subsequently changed the disability dates to September 12, 2005 to January 22, 2006.

By decision dated August 23, 2006, an Office hearing representative set aside the November 22, 2005 decision and remanded the case for further development of the medical evidence.

The Office referred appellant, with a statement of accepted facts and a list of questions, to Dr. Raymond R. Fletcher, a Board-certified orthopedic surgeon, for an examination and a rationalized medical opinion on whether her June 7, 2005 employment injury caused a lumbar disc protrusion and disabled her from work beginning August 23, 2005.

In a December 27, 2006 report, Dr. Fletcher reviewed appellant's medical history and provided findings on physical examination. He reported her description of being struck in the head, neck and back when a van trunk lid came down on June 7, 2005 but he noted that an earlier medical report indicated a history of being struck only on the head. Dr. Fletcher stated that appellant's subjective complaints far outweighed the objective findings and were supported by minimal abnormal musculoskeletal findings. Appellant's unwillingness to answer certain questions, exaggerated pain estimate, nonphysiologic findings and low voluntary effort on physical examination indicated secondary gain and symptom magnification. Dr. Fletcher stated that appellant's scalp contusion and spinal sprain injuries had healed and she could return to full-duty work.

The Office requested additional information and provided a list of questions to Dr. Fletcher. In a January 29, 2007 addendum report, Dr. Fletcher stated that the condition revealed on the August 22, 2005 MRI scan, a mild protrusion/tear at L4-5, was not related to appellant's June 7, 2005 employment injury.

By decision dated February 20, 2007, the Office denied appellant's claim on the grounds that she failed to establish that her disability beginning August 23, 2005 or her L4-5 disc protrusion was causally related to her June 7, 2005 employment-related face and scalp contusions and neck and lumbar sprains and strains.

Appellant requested reconsideration and submitted new medical evidence. An August 6, 2003 preemployment physical examination report indicated full range of motion of her back and normal strength. An August 6, 2003 x-ray report indicated a normal lumbar spine. Appellant's attorney argued that since the preemployment physical and x-ray did not reveal a back condition, her disability beginning August 23, 2005 and her L4-5 disc protrusion must be causally related to her June 7, 2005 employment injury. In a January 8, 2007 prescription for physical therapy, Dr. Faison diagnosed a disc protrusion at L4-5. In a February 6, 2007 disability certificate, he indicated that appellant was unable to work from November 9, 2005 to April 2, 2007 because of a work-related injury to her spine. In a February 23, 2007 lumbar spine MRI scan report, Dr. F. Alan Lovell, a Board-certified radiologist, stated that appellant had a small disc protrusion at L4-5.

By decision dated June 20, 2007, the Office denied modification of its February 20, 2007 decision.<sup>2</sup>

### **LEGAL PRECEDENT**

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>3</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on 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.<sup>4</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment nor is her belief that her condition was aggravated by her employment sufficient to establish causal relationship.<sup>5</sup>

### **ANALYSIS**

The Office accepted appellant's claim for contusions of the face, neck and scalp and lumbar spine sprains and strains sustained on June 7, 2005 in the performance of duty. Appellant subsequently claimed disability beginning August 23, 2005 and a disc protrusion at L4-5 as causally related to her employment injury.

An August 6, 2003 employment physical examination report indicated full range of motion of appellant's back and normal strength and an x-ray report of that date indicated a normal lumbar spine. Appellant argued that since the preemployment physical and x-ray did not reveal a back condition, her disability beginning August 23, 2005 and her L4-5 disc protrusion must be causally related to her June 7, 2005 employment injury. However, the Board notes that lay individuals such as appellant and her attorney are not competent to render a medical opinion.<sup>6</sup> Therefore, appellant's argument regarding the medical evidence does not establish that she was

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<sup>2</sup> Subsequent to the June 20, 2007 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>6</sup> *See Robert J. Krstyen*, 44 ECAB 227 (1992).

disabled beginning August 23, 2005 or sustained a disc protrusion causally related to her June 7, 2005 employment injury.

On July 27, 2005 Dr. Faison indicated that appellant was totally disabled due to post-traumatic headaches. However, headaches have not been accepted by the Office as causally related to the June 7, 2005 employment injury and Dr. Faison did not provide a rationalized explanation as to how the headaches were work related. As noted, a June 21, 2005 CT scan of appellant's brain was reported as normal. In an October 24, 2005 disability certificate, he indicated that appellant was disabled from September 22, 2005 to January 22, 2006 but provided no opinion on causal relationship. In an October 27, 2005 report, Dr. Faison diagnosed post-traumatic headaches and a myofascial injury of the cervical spine but did not provide a rationalized explanation as to how these conditions were related to appellant's June 7, 2005 employment injury. In an undated report received by the Office on November 14, 2005, he indicated that appellant was disabled beginning September 12, 2005 due to post-traumatic headaches. Dr. Faison indicated by checking "no" that the headaches were not caused or aggravated by an employment activity which conflicts with appellant's claim of a work-related condition or disability beginning August 23, 2005.

On January 23, 2006 Dr. Faison changed appellant's diagnosis to a disc protrusion of her lumbosacral spine. However, he did not submit a narrative report containing findings on physical examination and medical rationale on the issue of causal relationship. In a June 25, 2006 report, Dr. Faison stated that he first saw appellant on July 12, 2005 for severe headaches and cervical and lumbar spine pain. He diagnosed a traumatic disc protrusion at L4-5, traumatic myofascial injury of the cervical spine and post-traumatic headaches. Dr. Faison stated his opinion that appellant's disc protrusion was caused by the trauma to her lumbosacral spine on June 7, 2005. However, his opinion on causal relationship is not consistent with the August 22, 2005 MRI scan report of Dr. Tipton who stated that appellant's mild disc protrusion and desiccation at L4-5 was consistent with chronic degenerative disc disease, possibly related to marked obesity. Dr. Tipton's opinion on causal relationship is based on his actual readings of the MRI scan and therefore carries more weight. In a February 6, 2007 disability certificate, Dr. Faison indicated that appellant was unable to work from November 9, 2005 to April 2, 2007 because of a work-related injury to appellant's spine. However, he did not provide medical rationale in support of his opinion. The Board finds that the reports of Dr. Faison do not provide sufficient physical findings or medical rationale explaining how appellant's disability beginning August 23, 2005 or her disc protrusion at L4-5 were causally related to her June 7, 2005 employment-related contusions of the face, neck and scalp and lumbar spine sprains and strains.

In reports dated December 27, 2006 and January 29, 2007, Dr. Fletcher reviewed appellant's medical history and provided findings on physical examination. He reported her description of being struck in the head, neck and back when the van trunk lid came down on June 7, 2005 but he noted a discrepancy in the medical history. Dr. Fletcher noted that an earlier medical report indicated that appellant was struck only on the head. He stated that appellant's subjective complaints far outweighed the objective findings and were supported by minimal abnormal musculoskeletal findings. Appellant's unwillingness to answer certain questions, exaggerated pain estimate, nonphysiologic findings and low voluntary effort on physical examination indicated secondary gain and symptom magnification. Dr. Fletcher stated that appellant's work-related injuries, including a scalp contusion and cervical and lumbar sprains,

had resolved and she could return to full-duty work. He stated that the condition revealed on the August 22, 2005 MRI scan, a mild protrusion/tear at L4-5, was not causally related to her June 7, 2005 employment injury. The Board finds that the weight of the medical evidence is represented by the thorough and well-rationalized report of Dr. Fletcher which establishes that appellant's disability beginning August 23, 2005 and her disc protrusion at L4-5 were not causally related to her June 7, 2005 employment injury.

**CONCLUSION**

The Board finds that appellant failed to establish that her disability beginning August 23, 2005 or her disc protrusion at L4-5 were causally related to her June 7, 2005 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 20, 2007 is affirmed.

Issued: February 5, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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