# United States Department of Labor
# Employees' Compensation Appeals Board

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| **G.F., Appellant** | ) | |
| **and** | ) | **Docket No. 08-1906** |
| | ) | **Issued: February 11, 2009** |
| **DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, Fresno, CA, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On July 1, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 27, 2008 decision in which an Office hearing representative affirmed the denial of his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on September 24, 2007.

### ***FACTUAL HISTORY***

On October 12, 2007 appellant, then a 58-year-old inspector, filed a traumatic injury claim alleging that he reinjured his lower back and sustained a herniated disc after probing bins and lifting baskets of raisins into a sampler on September 24, 2007. He stopped work on September 26, 2007 and did not return.

In a September 27, 2007 work restriction form, Dr. Ali Fayed, a Board-certified internist, stated that appellant could return to work on October 1, 2007. He also issued an October 29, 2007 work restriction stating that appellant was out of work September 24 through October 29, 2007.

On November 5, 2007 the Office advised appellant of the type of factual and medical evidence needed to establish his claim and allowed him 30 days to submit such evidence.

Rodger Winslow, the inspector in charge of appellant's workplace, submitted an undated letter stating that he starting working with appellant on September 24, 2007 and on the following day appellant informed him that he was having trouble with his back and that he had been having trouble with it for a while.

Appellant also submitted several medical records in support of his claim. In a September 27, 2007 progress note, Dr. Fayed noted appellant's complaint of low back pain after lifting a heavy object at work and diagnosed low back strain. He stated in an October 11, 2007 progress note that appellant still complained of low back pain and he had a history of old lumbar disc problems in 1984. Dr. Fayed also diagnosed low back pain with mild radicular symptoms in the lower left quadrant. An October 18, 2007 magnetic resonance imaging (MRI) scan history and screening form indicated that appellant had stabbing pain and numbness in his lower back for 20 years caused by motorcycle accidents. On October 18, 2007 Dr. Phillip Tran, a Board-certified radiologist, interpreted the MRI scan results of appellant's lumbar spine and diagnosed an acute compression fracture deformity of the L2 vertebra. In an October 25, 2007 treatment note, Dr. Chandra Venugopal, a Board-certified radiologist, noted appellant's complaint of significant back pain since being involved in a "small accident" approximately a month and a half ago. She concluded that appellant's back pain was secondary to the L2 compression fracture. Dr. Venugopal stated that the etiology of the fracture was most likely secondary to osteoporosis. She also recommended vertebroplasty.

In a November 16, 2007 Form CA-20, attending physician's report, Dr. Fayed noted that appellant lifted a heavy object at work and diagnosed acute compression fracture, L2 vertebra. He also checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. A November 19, 2007 work restriction from Dr. Fayed advised that appellant could not return to work until January 1, 2008.

In a December 10, 2007 decision, the Office denied appellant's claim for compensation on the grounds that he had not submitted medical evidence sufficient to establish causal relationship between a diagnosed condition and employment incidents.[1]

Appellant requested a hearing on January 8, 2008. In support of his request, he submitted a January 2, 2008 work restriction from Dr. Fayed stating that he could return to work on March 3, 2008.

[1] The Office noted that the claim was initially received as a simple uncontroverted case and that, initially, it administratively allowed medical payments up to $1,500.00. However, it noted that, because appellant had claimed wage loss and his medical bills exceeded $1,500.00, it must formally adjudicate the claim.

On March 12, 2008 an Office hearing representative conducted an oral hearing by telephone. Appellant stated that he claimed a herniated disc injury based on his supervisor's advice. He listed "reinjury" because he believed that his back pain was the result of an old back pulled muscle that affected him every once in awhile. Appellant further stated that Dr. Venugopal concluded that his fracture was related to his work injury and not caused by osteoporosis. The Office hearing representative kept the record open for 30 days to allow submission of further medical evidence.

On May 27, 2008 an Office hearing representative affirmed the Office's December 10, 2007 decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

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. 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.[4]

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 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.[5]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *Id*.

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

## ***ANALYSIS***

The record supports that appellant is an inspector who was lifting baskets of raisins into a sampler on September 24, 2007 when he felt pain in his lower back. However, appellant has not submitted sufficient medical evidence to establish that this employment incident caused a personal injury.

Appellant submitted several reports from Dr. Fayed. In a November 16, 2007 attending physician's report, Dr. Fayed described the history of appellant's injury as the result of lifting a heavy object at work and diagnosed acute compression fracture at L2. He also supported causal relationship by checking a box "yes" on a form report to indicate that appellant's L2 fracture was caused or aggravated by lifting baskets into a sampler. However, Dr. Fayed did not provide any medical rationale explaining the reasons why he believed that the September 24, 2007 employment incident caused or aggravated the diagnosed fracture. Without medical rationale, this opinion has little probative value and is insufficient to establish a causal relationship.[6] This is especially important in a situation where the record indicates that appellant has a prior history of back conditions. In a September 27, 2007 progress note, Dr. Fayed noted appellant's complaint of low back pain after lifting a heavy object at work and diagnosed low back strain. However, he did not specifically opine that lifting at work caused or aggravated a particular condition. To the extent that Dr. Fayed's statement constitutes an opinion on causal relationship, he did not provide any medical reasoning to support his opinion. The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[7]

Other reports from Dr. Fayed are insufficient as they did not specifically address whether the September 24, 2007 employment incident caused or aggravated a diagnosed condition.[8]

Similarly, reports of other physicians do not specifically support that the September 24, 2007 employment incident caused or aggravated the diagnosed medical condition. Dr. Venugopal's October 25, 2007 report noted appellant's complaint of significant back pain since being involved in a small accident and he diagnosed an L2 compression fracture. However, she opined that the etiology of the fracture was most likely secondary to osteoporosis. Dr. Tran's October 18, 2007 MRI scan report did not address whether appellant's employment was the cause of any diagnosed condition.

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[6] *See Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

[7] *Patricia Bolleter*, 40 ECAB 373 (1988).

[8] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

For these reasons, the medical evidence is insufficient to establish that the September 24, 2007 employment incident caused or aggravated a diagnosed medical condition. Therefore, appellant has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.[9]

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 27, 2008 and December 10, 2007 are affirmed.

Issued: February 11, 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

[9] Following the Office's May 27, 2008 decision, appellant submitted new to the Office. However, the Board may not consider this evidence as it may only review evidence that was in the record at the time the Office issued its final decision. *See* 20 C.F.R. § 501.2(c).