



not allowed to sit during their work shifts. He was allowed two 15-minute breaks and one 30-minute break. One of appellant's tasks was "continuous screening" in which he used a hand wand over passengers, bending frequently, and also carried personal items to an x-ray machine and returned them to the passengers. He described as a preexisting bilateral lower extremity problem, missing a vein in his left leg due to coronary bypass surgery a partial amputation of his right leg following a motorcycle accident in 1970.

On December 6, 2005 the Office requested additional evidence including a detailed description of the employment activities which contributed to appellant's claimed conditions. It also requested a comprehensive medical report containing a description of his symptoms, the results of examinations and tests and medical rationale explaining how his conditions were causally related to specific factors of his employment.

A July 25, 2003 x-ray report revealed severe degenerative disc disease at L3-4. X-rays taken on February 9, 2006 revealed mild narrowing of the right hip joint space, degenerative changes in both knees and a post-traumatic deformity of the right proximal tibia. An April 5, 2006 report of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine included findings of mild Grade 1 spondylolisthesis and bilateral spondylosis at the L5-S1 level, mild diffuse spurring and disc bulging without evidence for herniation. At the L4-5 level, superimposed upon mild diffuse spurring and disc bulging, there was a disc protrusion compatible with a central and right paracentral contained herniation. There was moderate diffuse spurring and disc bulging at the L3-4 level without evidence for herniation.

In a February 9, 2006 report, Dr. Dev K. Mishra, a Board-certified orthopedic surgeon, reviewed appellant's medical history and x-rays and provided findings on physical examination. He noted that appellant began his federal employment in September 2002. Dr. Mishra diagnosed multilevel lumbar disc degenerative disease without radiculopathy, mild early bilateral hip osteoarthritis and advanced right patellofemoral osteoarthritis. He noted that appellant had an extensive orthopedic history which included an open right tibia/fibula fracture 20 years previously. Appellant's orthopedic surgeon at that time advised that he would eventually develop arthritis in the right knee. Dr. Mishra noted that appellant was moderately overweight and had a long-standing history of lumbar spine degenerative disc disease. Additionally, appellant had pain in the lateral aspect of both hips. Dr. Mishra stated that appellant experienced right knee, lower back and bilateral hip pain on almost a daily basis and had chronic lower extremity circulatory dysfunction. He noted that changes seen on x-rays and on clinical observation had existed for many years and it was difficult to believe that the changes were caused entirely by his work duties beginning in September 2002. Dr. Mishra stated that there may have been aggravating factors related to his work duties which caused a worsening of his symptoms. He opined that appellant might require permanent work restrictions and ongoing pain management.

In a May 22, 2006 report, Dr. Mark J. Sontag, a Board-certified physiatrist, stated that appellant's work activities as a security screener aggravated his Grade 1 L5-S1 spondylolisthesis and right L4-5 disc protrusion causing bilateral L5 radiculopathy.

Appellant prepared a statement describing his job duties and asked Dr. Mishra and Dr. Sontag to circle "yes" or "no" in answer to whether the job duties could have aggravated his

back condition. The duties included continuous standing or walking during an 8- or 10-hour shift with two 15-minute breaks and 30 minutes for lunch, working on a concrete floor, continuous lifting of luggage weighing between 5 and 70 pounds and carrying it to a search area, checking passengers with a hand wand for 30 minutes 4 times per work shift and working mandatory overtime during his first year of work. Dr. Mishra and Dr. Sontag circled “yes” to appellant’s descriptions of his job duties, indicating that the duties aggravated his preexisting back condition.

In reports dated March 13 and June 19, 2007, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, reviewed appellant’s medical history and provided findings on physical examination. He diagnosed degenerative disc disease of the lumbar spine with disc protrusion and spondylolisthesis with traumatic aggravation. Dr. Tauber noted that appellant sustained injuries to his back and lower extremities in a 1970 motorcycle accident, underwent medical treatment and reported a full recovery. He stated that appellant began his federal employment in September 2002 as a passenger screener whose duties included screening passengers, examining luggage and observing the x-ray machine. The physical requirements included prolonged standing, bending, twisting, stooping, repetitive movement of the upper and lower extremities and repetitive hand movement. Appellant sometimes had to assume awkward positions to perform his job and he lifted and carried up to 70 pounds. He worked 8 to 10 hours a day, 5 to 7 days a week. The history of injury provided was that in July 2003 appellant was wanding a passenger and, after bending down, he was not able to straighten up due to pain in his lower back radiating down both legs. Appellant was evaluated by a chiropractor, underwent physical therapy and was released to return to modified work duties. In July 2005, he returned to his passenger screening position for 18 months which caused an aggravation of his back symptoms. Appellant continued to work with restrictions but experienced increasing lower back pain. Dr. Tauber stated that, although appellant had a long-standing back condition, the symptomatology in his back and legs was aggravated during his federal employment. He opined that appellant’s lumbar spine condition was permanently aggravated by his federal work duties. On June 19, 2007 Dr. Tauber stated that appellant had a traumatic aggravation of his underlying lumbar spine degenerative disc disease which was caused by lifting luggage, wanding passengers and bending, squatting and stooping. He opined that each activity, by itself, was sufficient to cause an aggravation of appellant’s back condition and the combination of activities was more than sufficient to cause an aggravation. Dr. Tauber stated that the duties of appellant’s federal employment clearly played a role in permanently aggravating his underlying pathology.

By decisions dated March 2 and July 24, 2006 and February 13 and October 29, 2007, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish that his back, hip and knee conditions were caused or aggravated by factors of his employment.<sup>1</sup>

### **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

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<sup>1</sup> The Office issued a September 12, 2007 decision denying appellant’s request for reconsideration but reissued the decision on October 29, 2007 as a decision on the merits.

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 diagnosed condition is causally related to the employment factors identified by the employee.<sup>2</sup> The medical evidence required to establish causal relationship, generally, 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 and accurate 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>3</sup>

### ANALYSIS

Appellant has the burden to provide medical evidence establishing that he sustained a medical condition causally related to factors of his federal employment.

Dr. Sontag stated that appellant's work activities as a security screener aggravated his preexisting L5-S1 spondylolisthesis and right L4-5 disc protrusion causing bilateral L5 radiculopathy. However, he did not provide a thorough medical history of these preexisting conditions. Dr. Sontag did not describe the specific work activities that caused the aggravation. Additionally, he did not provide medical rationale explaining how specific work activities caused an aggravation of appellant's preexisting back conditions. Therefore, Dr. Sontag's report does not establish that appellant's preexisting back and lower extremity conditions were aggravated by his federal employment.

Dr. Mishra diagnosed preexisting multilevel lumbar disc degenerative disease without radiculopathy, mild early bilateral hip osteoarthritis and advanced right patellofemoral osteoarthritis. He noted that appellant's extensive orthopedic history included an open right tibia/fibula fracture 20 years previously. Appellant's orthopedic surgeon at that time advised that he would eventually develop arthritis in the right knee. He began his federal employment in September 2002. Appellant experienced right knee, lower back and bilateral hip pain on almost a daily basis and had chronic lower extremity circulatory dysfunction. Dr. Mishra noted that changes seen on x-rays and on clinical observation had existed for many years and it was difficult to believe that these changes were caused entirely by his work duties beginning in September 2002. He stated that there may have been aggravating factors related to his work duties which caused a worsening of symptoms. Dr. Mishra opined that appellant might require permanent work restrictions and ongoing pain management. There are several deficiencies in Dr. Mishra's report. He did not provide a thorough history of appellant's preexisting back and lower extremity conditions. Dr. Mishra's opinion on causal relationship is speculative in that he opined that there "may" have been aggravating factors related to appellant's work duties that

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<sup>2</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>3</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

caused a worsening of his underlying conditions. Additionally, he did not describe appellant's specific work activities. Dr. Mishra did not provide medical rationale explaining how specific work duties aggravated appellant's back and lower extremity conditions. He indicated that appellant might have permanent work restrictions but did not explain how appellant's work duties caused a permanent aggravation of his underlying conditions. For these reasons, Dr. Mishra's report does not establish that appellant's back, hip and leg conditions were permanently aggravated by his federal employment.

Appellant described his job duties and asked Dr. Mishra and Dr. Sontag to circle "yes" or "no" in answer to whether these job duties could have aggravated his back condition. The duties included continuous standing or walking with two 15-minute breaks and 30 minutes for lunch, working on a concrete floor, continuous lifting of luggage weighing between 5 and 70 pounds and carrying it to a search area, checking passengers with a hand wand for 30 minutes four times per work shift and working mandatory overtime during his first year of work. Dr. Mishra and Dr. Sontag circled "yes" to his descriptions of his job duties, indicating that the duties aggravated his preexisting back condition. However, the Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form report is of diminished probative value on the issue of causal relationship.<sup>4</sup> This evidence does not establish that appellant sustained a medical condition causally related to factors of his employment.

Dr. Tauber diagnosed lumbar spine degenerative disc disease and spondylolisthesis with traumatic aggravation. He noted that appellant sustained injuries to his back and lower extremities in a 1970 motorcycle accident. Appellant underwent medical treatment and reported a full recovery. Dr. Tauber stated that appellant began his federal employment in September 2002 as a passenger screener whose duties included screening passengers, examining luggage and observing the x-ray machine. The physical requirements included prolonged standing, bending, twisting, stooping, repetitive movement of the upper and lower extremities and repetitive hand movement. Appellant sometimes had to assume awkward positions to perform his job and he lifted and carried up to 70 pounds. He worked 8 to 10 hours a day, 5 to 7 days a week. In July 2003 appellant was wanding a passenger and, after bending down, he was not able to straighten up due to pain in his lower back radiating down both legs. He was evaluated by a chiropractor, underwent physical therapy and was released to return to modified work duties. Dr. Tauber noted that in July 2005 appellant returned to his passenger screening position for 18 months and experienced an aggravation of his back symptoms. He continued to work with restrictions, but experienced increasing lower back pain. Dr. Tauber opined that, although appellant had a long-standing preexisting lumbar spine condition, his condition was permanently aggravated by his federal work duties which included lifting luggage, wanding passengers and bending, squatting and stooping. However, he provided insufficient medical rationale explaining how appellant's work duties aggravated his degenerative spine condition, *i.e.*, the mechanism of injury. Additionally, Dr. Tauber did not explain how appellant was able to continue working for a considerable length of time, 18 months, if his work duties were aggravating his back condition. Due to these deficiencies, his report is not sufficient to establish that appellant's back and lower extremity conditions were aggravated by factors of his federal employment.

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<sup>4</sup> See Gary J. Watling, 52 ECAB 278, 280 (2001).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that his back, hip or knee conditions were caused or aggravated by factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 29, 2007 is affirmed.

Issued: January 13, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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