

In a letter dated July 3, 2007, the Office informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised to submit additional medical and factual evidence in support of her claim.

In response, appellant submitted prescription notes dated June 18 to July 17, 2007 and a July 17, 2007 duty status report (Form CA-17) from Dr. Howard Kuo, an attending Board-certified neurologist. On June 29, 2007 Dr. Kuo noted that appellant was under his care for a lumbar disc herniation at L5-S1 and was currently unable to work for the period June 30 to July 20, 2007. On June 19 and July 17, 2007 he requested appellant be excused for work due to her lumbar disc herniation. In the July 17, 2007 duty status report, Dr. Kuo diagnosed lower back herniation and provided work restrictions beginning August 6, 2007. He also noted that the injury occurred while appellant was performing her duties of lifting, dispatching, pulling and pushing. In a June 5, 2007 magnetic resonance imaging (MRI) scan, Dr. Lawrence M. Ratner, a Board-certified radiologist, reported a moderate size disc herniation at L5-S and small central L4-5 disc herniation.

By decision dated August 6, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the injury occurred as alleged. It also found the medical evidence insufficient to establish that her disc herniation was causally related to her employment.

Following the denial of her claim, the Office received an August 6, 2007 report from Dr. Kuo who diagnosed L4-5 and L5-S1 disc herniations based upon an MRI scan. Dr. Kuo advised that appellant was totally disabled for the period June 5 to August 6, 2007 and could return to light-duty work on August 6, 2007.

On August 13, 2007 appellant requested an oral hearing before an Office hearing representative, which was held on December 17, 2007. In a December 20, 2007 prescription note, Dr. Kuo advised that appellant's lower back condition could have happened while she was performing her job duties.

By decision dated March 20, 2008, the Office hearing representative affirmed the August 6, 2007 decision denying appellant's claim. The Office hearing representative found the evidence sufficient to establish that the May 31, 2007 incident occurred as alleged, but that the medical evidence failed to establish that she sustained a disc herniation due to the incident at work.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable,

¹ 5 U.S.C. §§ 8101-8193.

probative and substantial evidence,² including that she is an “employee” within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

To establish a causal relationship between a claimant’s condition and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁸ 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.⁹

ANALYSIS

Appellant alleged that, on May 31, 2007, she injured her back while performing her job duties of lifting, dispatching, pulling and pushing. The Office hearing representative found that appellant established the incident occurred, as alleged. The Board finds, however, that the medical evidence is insufficient to establish that the employment incident caused a back injury.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁶ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁷ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008).

⁸ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008).

⁹ *S.D.*, 58 ECAB ___ (Docket No. 07-1120, issued September 24, 2007); *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404 (1997).

The Board finds that the medical evidence provides insufficient explanation of how the incident of May 31, 2007 caused or aggravated the diagnosed disc herniation at L5-S1.¹⁰

The relevant medical evidence includes prescription notes and a July 17, 2007 duty status report from Dr. Kuo who indicated that appellant was disabled from work due to a lumbar disc herniation. In the brief prescription notes of record, Dr. Kuo provided no opinion as to the cause of appellant's back condition. While he described appellant's work duties in the July 17, 2007 duty status report, he provided no rationale explaining how the diagnosed disc herniation was causally related to her employment duties on May 31, 2007. 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 appellant.¹¹ Dr. Kuo's treatment notes do not meet these criteria. In addition, his December 20, 2007 report is speculative on the issue of causal relation. Dr. Kuo opined that appellant's lower back condition could have happened while she was performing her job duties. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal.¹² The opinion should be expressed in terms of a reasonable degree of medical certainty.¹³ Dr. Kuo did not provide an opinion of sufficient certainty addressing how appellant's diagnosed back condition was a result of her employment duties on May 31, 2007. He merely noted that appellant's condition "could have happened" while she was performing her job duties. For these reasons, Dr. Kuo's notes and report are not sufficient to establish that appellant's herniated disc was causally related to his work activity on May 31, 2007.

The record also contains a June 5, 2007 lumbar MRI scan by Dr. Ratner who diagnosed disc herniations at L4-5 and L5-S1. Dr. Ratner did not address the cause of appellant's herniations. 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.¹⁴

An award of compensation may not be based on surmise, conjecture or speculation.¹⁵ Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how

¹⁰ *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹¹ *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007).

¹² *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007).

¹³ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁴ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

¹⁵ See *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008); *Patricia J. Glenn*, 53 ECAB 159 (2001). *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁶ She failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on May 31, 2007 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2008 is affirmed.

Issued: January 14, 2009
Washington, DC

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

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

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

¹⁶ *Robert Broome*, 55 ECAB 339 (2004).