

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

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**D.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bolivia, NC, Employer**

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**Docket No. 08-2412  
Issued: July 14, 2009**

*Appearances:*

*Martha P. Brown, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 5, 2008 appellant filed a timely appeal from the June 5, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained an injury causally related to her federal employment.

On appeal, appellant, through her attorney, contends that she has proven that she sustained a work-related injury on December 28, 2005 which was aggravated by her employment duties after her return to work. She contends that the medical reports of a Dr. Alan Tamadon and Dr. Thomas E. Melin, a Board-certified neurosurgeon, support her claim.

## **FACTUAL HISTORY**

In a prior claim, the Office accepted that appellant sustained a lumbar strain as a result of a December 28, 2005 work injury and paid compensation benefits.<sup>1</sup> On June 6, 2006 appellant, then a 51-year-old rural route carrier, filed an occupational disease claim alleging that, after she returned to work, following the December 28, 2005 employment injury, she cased mail for 4½ hours a day which caused back pain. She first realized her illness was caused or aggravated by her employment on March 13, 2006. The employing establishment controverted the claim. It noted that appellant's work restrictions were accommodated and that she was not returned to her route due to a history of accidents and injuries.

In an April 18, 2006 note, Dr. Tamadon advised that appellant received an epidural injection. Another epidural steroid injection was administered by him on May 5, 2006. Dr. Tamadon noted complete pain relief after the injection.

In a June 5, 2006 note, Dr. Melin found that appellant remained able to work light duty, 25 hours a week. He noted that appellant would undergo a lumbar hemilaminotomy on June 13, 2006, following which she would be disabled for work for approximately six to eight weeks.

By letter dated June 14, 2006, the Office requested that appellant submit further information.

In a June 22, 2006 note, Dr. Melin noted that appellant had a lumbar disc herniation and was in need of surgery. He found that she was unable to work.

By decision dated July 17, 2006, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that her back condition resulted from the implicated employment factors.

By form received on August 1, 2006, appellant requested an oral hearing.

In an August 23, 2006 medical report, Dr. Melin indicated that appellant was status post right L5-S1 hemilaminotomy and microdiscectomy at L5-S1 with recurrent complaints of pain. He recommended scheduling a magnetic resonance imaging (MRI) scan. In a September 13, 2006 report, Dr. Melin reviewed the MRI scan and noted postoperative changes at the L5-S1 level.

At the hearing held on April 10, 2007, appellant testified that she worked for the employing establishment for about eight years. On December 28, 2005 while lifting a bucket of mail, she felt something pull in her lower back. Appellant noted that, prior to this, she had no back problems. After the injury, she initially continued to work but did as little lifting as possible, she stopped work for a period of time and then returned to light duty for four hours a day. Appellant's duties included emptying trash cans, light housekeeping and casing mail. She noted that her back condition became worse and she had surgery in July 2006. Following lumbar fusion in February 2007, appellant's knees hurt and she wore a brace. She related her back pain

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<sup>1</sup> Office File No. xxxxxx287

to the December 28, 2005 injury and to her work thereafter, specifically, “standing and putting up the mail.”

On April 24, 2007 Dr. Tamadon responded to questions from appellant’s attorney. In response to the question, “Did the job incident which [appellant] related to you that occurred on December 28, 2006 [sic] or the prolonged standing that occurred when she was initially released to light duty, or both, cause or contribute in any way to the condition for which you treated?” he stated: “Yes.” Dr. Tamadon also noted, “It is possible to suffer a disc herniation from the incident with bending [and] lifting. It is also possible to exacerbate a preexisting condition from such incident.” He also responded affirmatively when asked whether appellant’s subjective complaints were confirmed by the MRI scan and electromyogram.

In a decision dated June 15, 2007, the hearing representative affirmed the July 17, 2006 decision, finding that the medical evidence did not establish that appellant’s back condition was causally related to employment factors.

On March 11, 2008 appellant, through her attorney, requested reconsideration.

In a July 11, 2007 report, Dr. Melin diagnosed posterior lumbar interbody fusion at L5-S1 and postlaminectomy syndrome. He had little else to offer appellant from a neurological standpoint other than consideration of a spinal cord stimulator trial.

In an August 20, 2007 deposition, Dr. Melin noted that he first saw appellant on June 5, 2006 at which time she complained of back and right leg pain. Appellant told him that she had been lifting at work. Dr. Melin stated that appellant’s MRI scan revealed a disc herniation at L5-S1 and her “symptoms were completely consistent with lumbar radiculopathy. Appellant underwent a right L5-S1 hemilaminotomy and microdiscectomy on July 14, 2006. Dr. Melin indicated that she had residuals of pain after the surgery and underwent a spinal fusion at the L5-S1 level in early 2007. Since that time, appellant had residual complaints of back pain. Dr. Melin did not believe that she had reached maximum medical improvement. He was not aware of any specific release to return to work. In response to a question as to whether the December 28, 2005 incident, described as pulling a bucket of mail and feeling a pull in appellant’s back, could have caused the L5-S1 disc herniation, Dr. Melin replied, “Yes.” When counsel asked Dr. Melin if her job duties of casing mail for three to four hours a day, during which time her condition worsened, changed his opinion that the December 2005 incident caused her injury, he replied, “No.”

By decision dated June 5, 2008, the Office found that the medical evidence was insufficient to establish that appellant’s lumbar spine condition was causally related to her employment.

## LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> including that she is an employee within the meaning of the Act<sup>4</sup> and that she filed her claim within the applicable time limitation.<sup>5</sup> The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.

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.<sup>6</sup>

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.<sup>7</sup>

## ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence in support of her claim that her back condition is causally related to her work duties. None of the physicians provide rationalized medical opinion evidence relating her lumbar condition to her employment factors.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *See M.H.*, 59 ECAB \_\_\_\_ (Docket No. 0-8-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Eipedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

<sup>5</sup> *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.

<sup>6</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>7</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Dr. Tamadon provided epidural injections on April 18 and May 5, 2006. He responded to a question set forth by counsel concerning whether the December 28, 2005 injury or prolonged standing at work following her to light duty, or both, caused or contributed to her back condition. Dr. Tamadon reported “Yes.” From this one word answer, the Board is unable to determine what he thought caused appellant’s back condition. In the same form, Dr. Tamadon indicated that it was “possible to suffer a disc herniation from an incident with bending and lifting and that it was also possible” to exacerbate a preexisting condition from such incident. He failed to provide a well-rationalized opinion on causal relation based on a complete factual and medical background of the employee and by medical rationale explaining the nature of the relationship between the diagnosed back condition and the employment factors identified by appellant.<sup>8</sup> Dr. Tamadon only noted that it was “possible” that appellant’s condition was causally related to her work activities. The speculative nature of his opinion diminishes its probative value.<sup>9</sup>

Dr. Melin’s opinion is also insufficient to establish that appellant’s return to work caused or aggravated her lumbar disc herniation. He stated that the December 28, 2005 lifting incident could have caused appellant’s back condition. Dr. Melin did not specifically state that appellant’s lumbar condition was caused by her duties upon her return to work. Furthermore, he did not provide sufficient explanation in addressing the cause of appellant’s lumbar disc herniation. Dr. Melin merely indicated that a connection “could have” happened. Although he discussed his treatment of appellant, he did not provide a rationalized explanation as to how her disc herniation was causally related to her duties following her return to work.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is a causal relationship between her claimed condition and employment.<sup>10</sup> 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 employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>11</sup> Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury causally related to her federal employment, as alleged.

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<sup>8</sup> *Id.*

<sup>9</sup> *See Kathy Kelley*, 55 ECAB 206 (2004).

<sup>10</sup> *Patricia J. Glenn*, 43 ECAB 159 (2001).

<sup>11</sup> *Robert Broome*, 55 ECAB 339 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 5, 2008 is affirmed.

Issued: July 14, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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