



accurate factual and medical background, establishing that he sustained an injury causally related to his work activities on the date identified.<sup>1</sup>

On January 14, 2008 appellant, then a 48-year-old retired auditor, filed an occupational disease claim (Form CA-2) for cervical, thoracic and lumbar sprain/strain, aggravation of degenerative disc disease and chronic pain syndrome.<sup>2</sup> He alleged that he first recognized his condition and its relation to his federal employment in March 2006. Appellant alleged that performing various employment duties for 17 years, including sitting for prolonged periods of time caused his alleged conditions. The employing establishment controverted his claim.

Appellant submitted an April 3, 2006 report signed by Dr. Lori L. Baker, a Board-certified diagnostic radiologist, who reported findings from a magnetic resonance imaging (MRI) scan of appellant's cervical spine and diagnosed appellant with multilevel degenerative disc facet disease with significant bilateral foraminal narrowing at the C3-4 level on the right and at the C4-5 level on the right.

By report dated August 15, 2006, Dr. Andrew G. Malcolm, Board-certified diagnostic radiologist, reported that an MRI scan of appellant's lumbar spine revealed mild lumbar facet arthrosis.

Appellant submitted copies of treatment notes concerning appointments conducted March 27 through December 4, 2006, by Dr. William L. Tontz, a Board-certified orthopedic surgeon, who diagnosed degenerative disc disease, facet arthrosis and cervical radiculopathy.

Appellant submitted a copy of a supplemental report, also dated December 4, 2006, in which Dr. Tontz reported that appellant's employment duties aggravated a preexisting condition. Dr. Tontz noted that appellant had injured "his neck and back" on March 6, 2006 while moving furniture, books and a heavy printer into a new office. He also opined that "due primarily to the fact that [appellant] must sit for the vast majority of the day working on the computer, his job activities exacerbate the spinal condition from which he suffers." Finally, Dr. Tontz concluded that "in my professional opinion and to a degree of medical certainty, the work-related conditions from which [appellant] suffers, combined with the work duties performed by him at his employment with the Department of Defense, has rendered him to be temporarily totally disabled from his date[-]of[-]injury position."

Appellant submitted copies of notes between January 9 and March 6, 2007 in which Dr. Tontz diagnosed cervical, thoracic and lumbar diffuse degenerative disc disease with exacerbation and chronic pain. On February 6, 2007 Dr. Tontz opined that appellant's conditions were caused and exacerbated by activities he performed at work.

Appellant submitted a copy of a February 8, 2007 report, signed by Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who reviewed appellant's employment duties and medical

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<sup>1</sup> *T.H.*, 59 ECAB \_\_ (Docket No. 07-2300, issued March 7, 2008).

<sup>2</sup> The record reflects appellant retired on disability effective December 8, 2007.

history, reported findings on examination and diagnosed him with cervical degenerative disc disease.

Appellant submitted a note dated February 29, 2008, in which he provided additional factual information in support of his claim. He reported that his federal employment was mainly sedentary work requiring long periods of sitting in a fixed position at a desk. Appellant noted that his employment also involved frequent walking in factories, warehouses “and other industrial settings.” He also reported that “whether sitting or mobile, I would sometimes have to bend, stoop, twist or awkwardly stretch for books on shelves or files in drawers, cabinets or storage” and, occasionally “lift and move a heavy box or two of audit files.”

Appellant noticed his spine symptoms on March 6, 2006 while moving into a new office at work. After moving a number of items, including an HP Laser-Jet 4 printer, he experienced pain in his neck and shoulder areas that got worse over the next several days and was accompanied by back pain.

By decision dated April 2, 2008, the Office denied appellant’s claim because the evidence of record was insufficient to establish the claimed medical conditions were related to the identified employment factors.

On April 8, 2008 appellant, through his attorney, requested an oral hearing.

Appellant submitted additional medical evidence, consisting of reports from Dr. Tontz and Dr. Tauber, who stated:

“I have made it clear that [appellant] has long[-]standing degenerative disc disease of the cervical spine.... Please note that in developing degenerative disease, all activities of daily living, including employment activities, play a role in the wear and tear resulting in the formation of degenerative disease. [Appellant] had a sedentary job in addition and sat in a fixed position for prolonged periods of time. Occasionally, he would do lifting, reaching, and twisting. These activities, additionally, would contribute to the development of degenerative disease. It has, therefore, been my opinion that no one can say that his activities of work contributed ‘0’ to his developing degenerative disease, as everyone acknowledges that all activities contribute to the development of degenerative disease. In point of fact, ... [appellant] performed activities that contributed to the development of degenerative disease for 17 years at a minimum in the course of his employment. Therefore, it has been my opinion and remains my opinion that his employment duties are at least in part responsible for the degenerative disease of his cervical spine. It would be that the activities actually caused a portion of his degenerative disease....

“It should be further noted that in my reports, I have indicated that the specific work incident of March 6, 2006 did not cause his pathology, but aggravated his underlying pathology. This underlying degenerative disease was as a result of all of his activities of daily living in his entire life, which included his work duties over 17 years.”

A hearing was conducted on August 25, 2008 during which appellant provided testimony concerning his work activities.

By decision dated January 6, 2009, the Office's hearing representative affirmed the Office's April 2, 2008 decision. The hearing representative found that the evidence of record was insufficient to establish that appellant's medical condition was caused by his day-to-day employment activities or the alleged March 6, 2006 injury.

### **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 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>3</sup>

Under the Federal Employees' Compensation Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>4</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.

### **ANALYSIS**

Appellant identified performing various employment duties for 17 years, including sitting for prolonged periods of time, as employment factors that caused his degenerative disc disease. He has also alleged that moving furniture on March 6, 2006 caused his current condition. The Board has previously found however that the medical evidence of record did not establish that appellant's employment duties on March 6, 2006 caused his alleged conditions. As noted above, his burden is to establish, through production of probative rationalized medical evidence that the identified employment factors caused his cervical degenerative disc disease, with arthrosis and radiculopathy. The evidence of record remains insufficient to meet this burden and, therefore, the Board finds appellant has not satisfied his burden of proof.

The medical evidence of record consists of notes and reports from Drs. Baker, Malcolm, Tontz and Tauber. Drs. Baker and Malcolm's reports are of little probative value on the issue of causal relationship as they provided no medical opinion concerning how the identified employment factors caused or aggravated the conditions diagnosed. Reports lacking an opinion

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<sup>3</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>4</sup> *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>5</sup> *Id.*

on causal relationship are of little probative value.<sup>6</sup> As such these reports are of little probative value and are insufficient to satisfy appellant's burden of proof.

The majority of Dr. Tauber's and Dr. Tontz's reports are of little probative value on the issue of causal relationship as they pertain to appellant's alleged injury of March 6, 2006. The Board finds that this evidence lacks sufficient medical rationale on the issue of causal relationship. Accordingly, they have diminished probative value on the issue of causal relationship.<sup>7</sup>

Dr. Tauber's and Dr. Tontz's most recent reports diagnosed appellant with degenerative disc disease, facet arthrosis and cervical radiculopathy. In his report dated March 6, 2007, Dr. Tontz opined that appellant's cervical, thoracic and lumbar conditions were caused and exacerbated by the activities he performed at work. However, he did not describe appellant's daily work activities other than noting that his job was sedentary and that he sat at his desk working on the computer "the vast majority of the time.

Furthermore, both Dr. Tontz's and Dr. Tauber's reports are of little probative value because they lack any medical explanation as to how the identified employment factors caused or aggravated appellant's degenerative disc disease. 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>8</sup>

Reports lacking a medical explanation of causal relationship are of little probative value.<sup>9</sup> Dr. Tauber asserts that appellant's employment activities "are at least in part responsible for the degenerative disease...." He does not explain how or why appellant's employment duties were partially responsible. These deficiencies reduce the probative value of Dr. Tauber's report. As such, these reports are of little probative value and are insufficient to satisfy appellant's burden of proof.

In order to establish entitlement, a claimant must provide a physician's opinion that is 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

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<sup>6</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

<sup>7</sup> See *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>8</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

relationship between the diagnosed condition and the specific employment factors identified by the claimant. Appellant has not submitted such evidence and, accordingly, the Board finds appellant has not met his burden of proof.

**CONCLUSION**

The Board finds appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** January 6, 2009 and April 2, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 5, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board