

In an April 11, 2008 report, Dr. Andrew Lee, a radiologist, reported that x-rays of appellant's lumbar spine revealed mild compression deformity of the T11, T12, L1 and L2 vertebrae. He opined that the mild endplate irregularity in the lumbar levels may be due to the presence of Schmorl nodes. Dr. Lee noted the presence of mild to moderate narrowing of disc heights with mild osteophytic spurring at multiple levels and mild degenerative change of the S1 joint.

Appellant submitted an April 25, 2008 report signed by Dr. Brij Kapadia, a Board-certified diagnostic radiologist, who reported that an MRI scan of appellant's lumbar spine revealed minimal scoliosis of the lumbar spine with convexity directed to the left, centered at L3, with mild degenerative changes at the L1 through the S1 levels. The MRI scan also revealed moderate spinal canal stenosis at L2-3 and at L4-5 with neural foraminal narrowing at various levels.

Appellant also submitted a June 11, 2008 note in which he reported that he was retired by the Office of Personal Management on March 8, 2008 because of his "Venus Stasis" and shoulder problems. He noted that he underwent shoulder surgery on March 27, 2008 and that since retiring his back pain had increased.

On June 13, 2008 Dr. Jesse Dalton Babbitz, a neurosurgeon, reported findings upon examination and diagnosed lumbar degenerative disc disease.

Appellant submitted an August 25, 2008 note in which he alleged that his employment duties required prolonged standing, heavy lifting and pushing of cages. He alleged that performing these tasks impacted his physical ability and, over the years, caused problems in his back, right leg and right shoulder. Appellant reported that he has worked in operations for nearly 15 years. He alleged that his back problem arose on May 5, 2002 as sharp pains in his lumbar spine that radiated into his right leg. Appellant alleged that his symptoms were made worse by prolonged standing, bending, stooping, lifting, pushing, pulling and being exposed to the work environment at the employing establishment. He also noted that he had a previous work-related injury, to his shoulder, for which he underwent arthroscopic surgery.

By decision dated November 6, 2008, the Office denied appellant's claim because the evidence he submitted did not demonstrate that his alleged conditions were related to the established work-related event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of the 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.² These are essential elements of each and every

¹ 5 U.S.C. §§ 8101-8193.

² C.S., 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

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.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

ANALYSIS

Appellant claimed that he sustained a lumbar spine condition in the performance of duty. He identified casing mail, processing bulk mail as well as pushing cages and hampers as employment factors that caused his condition. Appellant's burden is to establish, through the production of probative medical evidence, that his alleged lumbar spine condition is causally related to the identified employment factors. The Board finds that the evidence of record is insufficient to satisfy appellant's burden of proof because it lacks a rationalized probative medical opinion concerning the causal relationship between his lumbar spine condition and the identified factors of his federal employment and therefore the Office properly denied his claim.

The relevant medical evidence of record consisted of reports from Drs. Babbitz, Kapadia, and Lee. These reports are of diminished probative value as none of these reports contained a rationalized medical opinion concerning the causal relationship between appellant's lumbar spine condition and the identified factors of his federal employment. The Board has held that a report that lacks an opinion on causal relationship is of diminished probative value.⁶ As noted above, rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed

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

⁴ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

⁶ *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).

condition and employment factors. Because none of these reports contained an opinion on causal relationship they are of diminished probative value and are insufficient to meet appellant's burden of proof.

Appellant argued that the reason he sustained his lumbar spine, Venus Stasis of his right leg and right shoulder problems was because of the continued prolonged standing, stooping, usage of the rest bar in his unit and other heavy lifting tasks he performed since he started working for the employing establishment in 1993. However, whether medical conditions such as these are causally related to appellant's federal employment is a medical issue that can be established only by probative medical evidence.⁷ Appellant's lay opinion in the matter is not relevant.

An award of compensation may not be based on surmise, conjecture or speculation.⁸ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹

Appellant had the burden of establishing, by the weight of the probative medical evidence, that his condition was causally related to the identified factors of his employment. The Office advised him of the importance of submitting such competent evidence. As there is no probative evidence of record establishing that appellant's condition is causally related to his federal employment, he has not established that he sustained an injury in the performance of duty causally related to his federal employment and, therefore, the Office properly denied his claim.

CONCLUSION

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

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁸ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

⁹ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT November 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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