



The record reflects that on May 24, 2007 appellant underwent lumbar disc decompression at L4-5 and L5-S1. A September 6, 2007 magnetic resonance imaging (MRI) scan showed a small central disc protrusion at L4-5 not producing mass effect on the L5 root sleeves or thecal sac; a small central and right paracentral disc herniation at L5-S1 slightly larger than a prior study with no displacement of the S1 root sleeves or thecal sac; and bilateral L5 spondylolysis consistent with a pars defect and foraminal stenosis.

On September 18, 2007 appellant discussed treatment options with Dr. William D. Hunter, a Board-certified neurosurgeon, who discussed the possibility of an L5 lumbar laminectomy with pedicle screw fixation and fusion at L5-S1 with possible lumbar interbody fusion. She reported that she could no longer continue her lifestyle and wanted to prepare for surgery soon. "In the meantime," Dr. Hunter wrote, "I would like for her to be placed in a lumbar brace and then plan for the procedure."

When appellant received medical attention on October 20, 2007, the day she lifted the bundles of newspapers at work, she reported feeling a "crack" in her low back as well as pain and tingling in her left lower extremity. Dr. Hunter interpreted an October 25, 2007 MRI scan as showing a large disc herniation at the L5-S1 region with an annular tear.

In a decision dated December 6, 2007, the Office denied appellant's claim for compensation. It found the evidence insufficient to establish that the incident occurred as alleged. The Office also found insufficient medical evidence of causal relationship.

On April 2, 2008 Dr. John W. Ellis, a Board-certified family physician, related appellant's history of injury and prior lumbar surgery. He reviewed her medical records and described his findings. Dr. Ellis diagnosed herniated lumbar disc secondary to the October 20, 2007 incident and exacerbation of an old injury secondary to the October 2007 accident. It was his opinion that appellant's work duties aggravated or caused these injuries. Dr. Ellis stated:

"The mechanism of injury that occurred in October 2007 and the complaints of the patient that the patient had at that time are consistent with a disc injury to the lumbar spine. [Appellant] had no problems with her prior injury until this new injury in October 2007. At that time she had pain extending down her left leg into her foot from the lumbar spine. This was caused by the injury to the discs, resulting in a decrease in the intervertebral spaces, which put pressure on the nerve root leading to the leg and foot pain. This injury is directly and causally related to the lifting accident that occurred in October 2007."

On June 19, 2008 the Office reviewed the merits of appellant's claim and modified its prior decision. It found that the factual evidence supported that the October 20, 2007 incident occurred as alleged. The Office found, however, that the medical evidence did not support causal relationship. It noted that Dr. Ellis incorrectly reported that appellant had no problems with her prior injury until October 20, 2007. The Office noted that she was diagnosed with disc herniation and that surgery was recommended prior to that date. It found Dr. Ellis' rationale insufficient to establish causal relationship.

On July 7, 2008 Dr. Ellis reported that appellant did have a prior lumbar injury in 2006, but she was released to return to work with no restrictions and had excellent results from the treatment she received. “The patient was not having any problems or symptoms with her back when the injury occurred on October 20, 2007.” He noted that the prior injury had nothing to do with the injury that occurred on October 20, 2007. On December 19, 2008 Dr. Ellis repeated his opinion on causal relationship.

In decisions dated April 20 and August 10, 2009, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that it still had received no clear, detailed medical explanation of the causal relationship between the October 20, 2007 work incident and appellant’s low back disc condition, one that took into account the existence of the prior L5-S1 injury.

On appeal, appellant contends that fact of injury and causal relationship were proved.

### **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

## ANALYSIS

There is no dispute that the October 20, 2007 incident occurred as alleged. The Office accepted that appellant was picking up two bundles of newspapers that day in the course of her employment. Appellant has established that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question becomes whether that incident caused an injury.

The circumstances are consistent with an injury. Appellant stopped work immediately after the incident and sought medical attention for her low back that same day. She reported feeling a “crack” in her low back as well as pain and tingling in her left lower extremity. Appellant submitted medical opinion evidence supporting the element of causal relationship. Dr. Ellis, a family physician, explained both how the mechanism of injury and appellant’s complaints at that time were consistent with a disc injury to the lumbar spine.

The Office noted that, contrary to Dr. Ellis’ assertion, appellant was having problems with her low back prior to October 20, 2007. Appellant underwent lumbar disc decompression at L4-5 and L5-S1 on May 24, 2007. One month before the incident at work, it was decided she should undergo further surgical intervention. Dr. Hunter, her neurosurgeon, wanted her in a back brace. The evidence shows that appellant came to the October 20, 2007 incident in a compromised state. A September 6, 2007 MRI scan showed a small disc herniation at L5-S1. Five days after the October 20, 2007 work incident, an MRI scan showed a large disc herniation at L5-S1, as interpreted by Dr. Hunter, as well as an annular tear at that level, something not reflected in the pre-incident study.

Although Dr. Ellis did not fully report appellant’s low back problems prior to the October 20, 2007 work incident, the Board finds that the medical evidence is sufficiently supportive of causal relationship that further development is warranted.<sup>7</sup> The Board will set aside the April 20 and August 10, 2009 Office decisions and will remand the case for further development. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant’s entitlement to workers’ compensation benefits.

## CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted.

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<sup>7</sup> *E.J.*, 61 ECAB \_\_\_ (Docket No. 09-1481, issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10 and April 20, 2009 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Issued: August 25, 2010  
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