



involving repetitive motion such as microtomy, embedding and sitting for extended periods of time caused him to sustain a sprained back. He alleged that the repetitive nature of his profession is the primary factor that caused his injury. Appellant relates that embedding and microtomy tasks placed stress on his neck and back region.

The record indicates that appellant began his federal employment in a temporary position on February 2, 2009 and was terminated from his employment on March 17, 2009.

Appellant submitted a report dated February 20, 2009 in which Dr. Jack J. Springer, Board-certified in emergency medicine, diagnosed back sprain.

On March 9, 2009 Dr. Simone E. Kanter, a Board-certified internist, reported appellant's history as four months of neck pain and one month of back pain. He also noted that appellant's line of work entailed detailed work that required him to keep his neck bent and required a lot of rotational movements. Dr. Kanter discussed his findings on examination and diagnosed back pain, depression and agitation. X-rays revealed no radiological evidence of acute osseous abnormality. Dr. Kanter also noted that MRI scan examination revealed L4-5, L5-S1 bulge and mild degenerative changes at L4-S1. In a March 22, 2009 progress note, Dr. Kanter stated that appellant had a three-month history of back pain.

On March 23, 2009 Dr. Adam Wang, a Board-certified diagnostic radiologist, reported that magnetic resonance imaging (MRI) scans revealed a broad-based bulge at the L4-5 and L5-S1 levels. He also noted the presence of degenerative changes at the L4-5 and L5-S1 levels.

In an April 1, 2009 note, Dr. Kanter reviewed appellant's history of injury. He related:

"It is difficult to say exactly what caused [appellant's] spine disease. However, prolonged sitting at work and inattention to ergonomics including proper back support, could have certainly contributed to [appellant's] worsening pain.

"I do not know how long [appellant] will be unable to perform his current work as [appellant] is just beginning conservative treatment plan."

In an April 7, 2009 note, appellant noted experiencing "a gradual increase in pain beginning the first week on the night shift (16Feb09)."

By decision dated April 27, 2009, the Office denied the claim. It noted that it had converted appellant's claim from a traumatic injury to an occupational disease claim. The Office accepted that appellant established employment factors responsible for his condition. It denied the claim because the evidence of record did not establish that employment factors caused a medically diagnosed condition.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

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>7</sup>

## ANALYSIS

The Office accepted employment duties such as microtomy, embedding, and sitting for extended periods of time as employment factors. Appellant's burden is to establish that the accepted employment factors caused a medically diagnosed condition. Causal relationship is a medical issue that can only be proven by probative 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

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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, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>7</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

the employee.<sup>8</sup> Appellant has not submitted sufficient medical opinion evidence and therefore has not established that he sustained an injury in the performance of duty.

Dr. Kanter's reports have little probative value and are insufficient to satisfy appellant's burden of proof. His reports lack a consistent and accurate history of injury. In his report dated March 9, 2009, Dr. Kanter noted that appellant had a four-month history of neck pain and a one-month history of back pain, while on March 22, 2009 he reported a three-month history of back pain. Since appellant only began his employment on February 2, 2009, the history of injury should have provided further insight into the origins of the back and neck pain, which preceded his federal employment.

Furthermore, Dr. Kanter does not explain how the accepted employment factors caused the conditions he diagnosed, given appellant's medical history.<sup>9</sup> He opined that it was difficult to say exactly what caused appellant's spine condition. These deficiencies reduce the probative value of Dr. Kanter's opinion and reports such that they are insufficient to satisfy appellant's burden of proof.

The reports from Drs. Springer and Wang have little probative value on the issue of causal relationship. Neither physician provided an accurate medical history. Both reports lack a rationalized medical opinion explaining how the established employment factors caused a medically diagnosed condition.<sup>10</sup> These deficiencies reduce the probative value of these physician's opinions such that their reports are also insufficient to satisfy appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. 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.<sup>11</sup>

The Board finds appellant has not established he sustained an injury in the performance of duty causally related to his employment.

### **CONCLUSION**

The Board finds appellant has not established he sustained an injury in the performance of duty causally related to his employment.

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<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).

<sup>10</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*, *supra* note 9; *Franklin D. Haislah*, *supra* note 9.

<sup>11</sup> *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** the April 27, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2010  
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