



In an October 6, 2008 report, Dr. G. William Eason, a Board-certified radiologist, presented findings following a magnetic resonance imaging (MRI) scan of appellant's dorsal spine. He diagnosed degenerative disc disease and a disc protrusion at the T7-8 vertebrae.

Appellant submitted copies of a police report and reports bearing illegible signatures. She also submitted a collection of reports and a note signed by a physical therapist and a physician's assistant as well as an unsigned report, dated December 22, 2008, concerning an epidural injection.

The employing establishment controverted appellant's claim, arguing that any injuries she sustained were not compensable because she was not engaged in her official duties and the incident did not occur on its premises. On January 27, 2009 the employer stated that at the time of the accident appellant was driving her personal vehicle. It noted that she used her personal vehicle "during the workday." The employing establishment also questioned the validity of appellant's claim because of the time line underlying her accident.

By decision dated March 9, 2009, the Office denied the claim because appellant failed to demonstrate that her injury arose in the performance of duty.

On August 21, 2009 appellant, through her attorney, requested reconsideration. Counsel argued that the Office's March 9, 2009 decision was erroneous because there was no proof that appellant's motor vehicle accident did not occur in the performance of duty. He argued that, because appellant's motor vehicle accident occurred while she was commuting from the employing establishment's property to her home, her injuries were sustained in the performance of duty.

By decision dated October 1, 2009, the Office modified its March 9, 2009 decision, finding that appellant's motor vehicle accident occurred in the performance of duty. Nonetheless, it denied the claim because the medical evidence of record did not demonstrate that this incident caused a medically-diagnosed injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>2</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>3</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>4</sup> The weight of

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

### ANALYSIS

The Office accepted that the September 25, 2008 motor vehicle accident occurred in the performance of duty. Appellant must also establish that the accepted employment incident caused her back injury. Causal relationship is a medical issue that can only be proven through probative medical opinion evidence. Appellant has not submitted sufficient medical evidence to establish her claim.

Appellant submitted reports bearing illegible signatures and reports from a physical therapist and a physician's assistant. The illegible signed reports are not competent medical evidence and have no evidentiary value because they cannot be identified as having been prepared by a "physician" as defined under the Act.<sup>8</sup> Similarly, healthcare providers such as a physician's assistant and physical therapist are not "physicians" under the Act. These reports do not constitute competent medical evidence.<sup>9</sup> This evidence does not establish the causal relationship of appellant's back condition to the September 25, 2008 motor vehicle accident.

Dr. Eason's report is of diminished probative value on the issue of causal relationship because the physician did not provide a rationalized opinion explaining how the motor vehicle accident caused a medically-diagnosed condition.<sup>10</sup> His report is a diagnostic study of appellant's lumbar spine and listed degenerative disc disease at multiple levels. Dr. Eason did

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<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>7</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>8</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

<sup>9</sup> 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<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).

not address the issue of how the September 25, 2008 accident caused or contributed to the diagnosed conditions. This evidence does not establish causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>11</sup> Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>12</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>13</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>14</sup> does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the established employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

### **CONCLUSION**

The Board finds appellant has not established that she sustained an injury in the performance of duty on September 25, 2008, causally related to her employment

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<sup>11</sup> *Edgar G. Maiscott*, 4 ECAB 558 (1952).

<sup>12</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>13</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>14</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

**ORDER**

**IT IS HEREBY ORDERED THAT** October 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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