

his condition in December 2003 and first related his condition to his employment duties on January 23, 2004. Appellant stated on January 23, 2004 that he loaded baggage on a cart and sat down to view the monitor. He stood up and felt a sharp pain in his lower back. Appellant submitted a report dated January 26, 2004 from Dr. Thomas C. Borut, a Board-certified pediatrician, diagnosing lumbar strain and attributing this condition to appellant's activities on January 23, 2004. Dr. Borut released appellant to return to limited duty on January 24, 2004.

In a letter dated February 19, 2004, the Office requested additional factual and medical evidence from appellant. Dr. Borut examined appellant on January 29, 2004 and diagnosed sciatica. On February 3, 2004 he found no spasm, no spinal tenderness, normal reflexes and gait. Dr. Borut diagnosed lumbosacral strain and released appellant to return to full duty.

By decision dated March 10, 2004, the Office accepted appellant's claim for lumbar strain.

On March 2, 2004 appellant filed a recurrence of disability claim alleging on February 14, 2004 he sustained a recurrence of total disability due to his January 23, 2004 employment injury. In a letter dated June 28, 2004, the Office accepted that appellant continued to experience residuals of his January 23, 2004 employment injury and authorized compensation benefits through March 20, 2004. It stated that his claim continued to be open for medical treatment, but did not accept a separate recurrence of disability. The Office noted that limited duty was not available for appellant for March 7 through July 10, 2004.

The Office referred appellant for a second opinion evaluation on July 28, 2004. In a report dated August 19, 2004, Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, examined appellant for the Office and found that he had mild disc space narrowing at L4-5 and L5-S1 on x-ray. He found normal range of motion of the spine, normal motor testing and decreased sensation to light touch over the anterolateral aspect of the left thigh. Dr. Bleecker also reported unobtainable deep tendon reflexes in the lower extremities. He diagnosed lumbar strain and meralgia paresthesia of the left thigh. Dr. Bleecker stated that appellant's left thigh condition was not related to his back injury. He opined that appellant's lumbar strain was "essentially recovered" but recommended four weeks of physical therapy due to appellant's deconditioning.

The Office authorized a magnetic resonance imaging (MRI) scan on September 22, 2004. On September 20, 2004 appellant's MRI scan revealed disc desiccation at L4-5 and some decrease in disc height, while the rest of the discs in the lumbar spine were normal height and normal signal intensity. Dr. Borut reviewed this study on September 27, 2004 and found a posterior broad-based disc bulges at L2-3, L3-4 and L4-5. He also found bilateral facet arthropathy at L2-3 as well as bilateral facet arthropathy and mild narrowing of the central spinal canal at L4-5 and mild narrowing of the central canal and neural foramina at L3-4. Dr. Borut stated that these conditions were reasonable etiologies of appellant's chronic intermittent lumbosacral pain. In a note dated September 27, 2004, he opined that appellant could return to light-duty work on that date with restrictions on lifting, bending, pushing and pulling. Dr. Borut diagnosed lumbar strain, lumbosacral strain and sciatica.

Appellant submitted a report dated February 6, 2007 from Dr. Sherie Carnegee, an osteopath, noting appellant's 2004 back injury. Dr. Carnegee stated that appellant's pain level depended on what he did, noting that in September or October after he had worked on his car he could hardly walk. She stated that appellant had developed increased pain when sitting or walking long distances. Dr. Carnegee reviewed the 2004 MRI scan and found disc dessication at L2-3, L3-4 and a broad disc bulge. She diagnosed low back pain with multiple herniated discs.

Dr. Emil Heinze, a Board-certified internist, completed a report on March 8, 2007 noting appellant's diagnosis of chronic degenerative joint disease of the spine. He noted that appellant's 2004 MRI scan revealed multiple broad-based disc bulges with some mild narrowing of the spinal canal and arthropathy. Dr. Borut examined appellant on March 12, 2007 and stated that appellant's MRI scan showed degenerative joint disease without anything warranting surgical intervention. He opined that appellant required continued work restrictions. Dr. Borut completed a similar report on April 11, 2007 and noted that appellant had never had evidence of lumbar radiculopathy.

Dr. Kamran Aflatoon, an osteopath, examined appellant on September 22, 2008 and noted his history of injury and current symptoms of pain and discomfort in his low back area with radiation down the right leg, as well as numbness and tingling in the right foot. He found some loss of range of motion in appellant's lumbar spine, with no paraspinal tenderness or spasm. Dr. Aflatoon diagnosed low back pain and radiculopathy. Appellant underwent a second MRI scan on October 1, 2008. The report findings included a central right posterior paracentral and right intraforaminal L3-4 herniation. On October 13, 2008 Dr. Aflatoon stated that appellant's MRI scan demonstrated a large disc herniation at L3-4. He recommended that appellant continue his light-duty job restrictions.

In a letter dated November 4, 2008, the Office stated that appellant had not submitted medical evidence that his disc herniation was work related and requested a detailed medical report. Dr. Aflatoon completed a report on November 17, 2008 and diagnosed a large disc herniation and opined that appellant had this condition for a long time. He indicated that appellant should not lift over 20 pounds. On December 22, 2008 Dr. Aflatoon recommended a lumbar laminectomy and discectomy at L3-4 and stated that appellant could continue his modified duties while awaiting approval for surgery.

Appellant completed a statement on January 13, 2009 and stated, "I believe that my sciatic is related to my primary injury." He asserted that his injury had progressed. Dr. Aflatoon examined appellant on January 26, February 23, March 23 and April 27, 2009, diagnosing disc herniation at L3-4 with radiculopathy and recommending surgical treatment. He noted that appellant could continue with his modified activities.

By decision dated May 27, 2009, the Office denied appellant's claim finding that he failed to submit the necessary medical evidence to establish a causal connection between his accepted employment injury from January 23, 2004 and his current herniated disc at L3-4 first diagnosed on October 1, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

ANALYSIS

The Office accepted that appellant sustained a lumbar strain due to his federal employment. Appellant returned to light work. On March 8, 2007 his physicians expanded his diagnoses to include chronic degenerative joint disease of the spine. Appellant underwent a second MRI scan on October 1, 2008 which included a central right posterior paracentral and right intraforaminal L3-4 herniation. In a statement dated January 13, 2009, he alleged that his current condition of sciatic was related to his primary injury as his injury had progressed. Appellant submitted several medical reports from Dr. Aflatoon, an osteopath, in support of his claim.

The Board finds that there is no medical opinion evidence addressing the relationship between appellant's current diagnosed condition of herniated disc at L3-4 and his employment injury. While Dr. Aflatoon provides findings on examination, a diagnosis and treatment recommendations, none of his reports offers an opinion as to whether appellant's current condition is due to his accepted lumbar strain or a natural progression of the chronic degenerative joint disease. The complete lack of medical evidence addressing the central issue

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

of causation is fatal to appellant's claim. Dr. Aflatoon has simply failed to provide any medical evidence offering any explanation for his currently diagnosed condition. Without medical opinion evidence describing how appellant's current condition is related by causation or aggravation to his employment, appellant has failed to meet his burden of proof and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish that his current herniated disc is due to his employment and that his claim must therefore be denied.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board