

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**G.O., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Albany, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 09-1713  
Issued: May 19, 2010**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On June 10, 2009 appellant, through his attorney, filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated June 12 and November 19, 2008 and May 29, 2009 denying appellant's claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.<sup>1</sup>

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on April 4, 2008.

On appeal, appellant's attorney contends that the evidence in this case is firmly supportive of appellant's claim that a causally related large extruded fragmented/herniated disc at level L5-S1 currently disables him from his work.

---

<sup>1</sup> In its May 29, 2009 decision, the Office cites to legal precedent with regard to the evaluation of appellant's claim under the clear evidence of error standard. However, it is clear from the analysis conducted by the claim's examiner, that he conducted a merit review of appellant's claim.

## **FACTUAL HISTORY**

On May 6, 2008 appellant, then a 50-year-old food service worker leader, filed a traumatic injury claim alleging that, on April 4, 2008, while performing repetitive bending/squatting to place dessert on a food tray near the bottom of a cart, he heard and felt a snapping sound and experienced pain in his lower back. He listed the nature of his injury as left paracentral disc extrusion at L5-S1.

By letter dated May 9, 2008, the Office asked that appellant submit further information.

Appellant submitted notes and Dr. Michael Krastins, a Board-certified internist, that were cosigned by Dr. John Purcell, a Board-certified dermatologist. In an April 8, 2008 progress note, Dr. Krastins noted that appellant was sorting meal trays for the employing establishment when his back pain increased. He noted that the incident occurred “last Friday” and that appellant treated himself with rest, Motrin, antispasm medication and heating packs, but that this was not working. Dr. Krastins indicated that considering appellant’s history, appellant’s back pain may be secondary to degenerative joint disease. He noted that, while appellant’s pain had previously been controlled with ibuprofen, he gave him stronger medication and a note for leave from work. In an April 11, 2008 report, Dr. Krastins noted that appellant was being treated for left-sided sciatica/musculoskeletal back pain with physical therapy, rest and medication. In an April 15, 2008 report, he noted that appellant had a past medical history of chronic left lower back pain at the time he presented symptoms of increased lower back pain after an incident that occurred “last Friday.”

In a magnetic resonance imaging (MRI) scan of the lumbar spine conducted on April 21, 2008, Dr. Jae-Ryun, a radiologist, found left paracentral disc extrusion displacing the left S1 nerve roots and mild central canal stenosis.

In a May 6, 2008 duty status report, Dr. T. Seaman, a Board-certified family practitioner, indicated that appellant was not able to work. When asked to describe how the injury occurred, he stated that appellant was placing food in a cart when he felt a pop and developed low back pain.

In a May 28, 2008 report, Dr. Valmore Pelletier, a Board-certified neurosurgeon, noted appellant’s history and discussed the April 4, 2008 incident, noting that, while working in the kitchen and repetitively bending and squatting, appellant heard a crack in his back. Appellant noted that the pain initially only lasted three to four minutes but that when he tried to get out of bed on the following Monday morning, he had severe and incapacitating pain. Dr. Pelletier noted, “At this point in time it appears from a historical standpoint that the injury of repetitive bending was a competent producing cause of what sounds like [an] acute extruded fragment dis[c].” He opined that appellant was disabled with a substantial loss of motor function in the left leg and that he needed a laminectomy and discectomy.

By decision dated June 12, 2008, the Office denied appellant’s claim for the reason that the evidence did not establish that factors of his employment caused or contributed to his claimed injury.

By letter dated August 26, 2008, appellant requested reconsideration.

In an operative report by Dr. Pelletier dated June 16, 2008, she noted that she performed a hemalaminectomy (left L5-S1) and an excision of extruded fragment disc on appellant.

In an August 13, 2008 note, Dr. Pelletier stated that appellant indicated that he had improved about 30 percent. In a September 3, 2008 report, he indicated that appellant had improved dramatically. Specifically, Dr. Pelletier noted that appellant's leg pain gradually diminished but that back pain still exists although it is relieved by muscle relaxants.

In a September 5, 2008 postsurgery MRI scan report, Dr. Jae-Ryun noted that there was residual or recurrent left paracentral disc extrusion with exuberant granulation process abutting the left S1 nerve root. However, he noted that the displacement was less than in the prior examination.

By decision dated November 19, 2008, the Office found that, although the medical evidence established that appellant had a back condition, the evidence had not provided a causal link between the diagnosed conditions and the claimed injury of April 4, 2008. Accordingly, it denied appellant's request for reconsideration because the evidence was not sufficient to warrant modification of a prior decision as appellant did not prove a causal relationship between the diagnosed conditions and the incident of April 4, 2008.

By letter dated March 5, 2009, appellant, through his attorney, requested reconsideration. In support of his request for reconsideration, he submitted a January 29, 2009 medical report wherein Dr. Pelletier noted that appellant had a large recently extruded fragment that he opined came about as a result of the repetitive vertical-loading injury in his spine on April 4, 2008. Dr. Pelletier stated, "In my opinion and without any previous history with regard to his back and considering the findings at surgery, [the accepted incident] was an acute event that was a competent-producing cause of his need for surgery and his continuing disability, which basically is residual musculigamentous pain that is gradually resolving."

By decision dated May 29, 2009, the Office denied modification of the June 12 and November 19, 2008 decisions.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193 (2006).

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2008); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). A causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup>

### ANALYSIS

There is no dispute that on April 4, 2008 appellant was bending/squatting to place dessert on a food tray near the bottom of the cart. However, the Office denied appellant's claim because the medical evidence was insufficient to establish a relationship between the claimed medical condition of paracentral disc extrusion at L5-S1 and the employment-related incident of April 4, 2008.

The Board finds that medical evidence is insufficient to establish causal relationship. Although Dr. Krastins noted the employment incident and indicated that he was treating appellant for left-sided sciatica and musculoskeletal back pain, he did not indicate that these conditions were caused by the aforementioned incident. Dr. Jae-Ryun interpreted the April 21, 2008 MRI scan as evincing left paracentral disc extrusion displacing the left S1 nerve roots and mild central canal stenosis, but did not give an opinion as to the cause of this condition. Dr. Seaman completed a duty status report indicating that appellant had a herniated L5-S1 disc and indicated that this occurred while he was placing food in a cart. However, he did not provide a rationalized medical opinion directly linking the placing of food in the cart to appellant's herniated disc. Dr. Pelletier noted in his May 28, 2008 report, "At this point in time it appears from a historical standpoint that the injury of repetitive bending was a competent producing cause of what sounds like an acute extruded fragment dis[c]." This opinion is speculative in that it does not provide a definitive, well-rationalized explanation as to how the employment incident caused the paracentral disc extrusion at L5-S1. Further reports from Dr. Pelletier also fail to provide the necessary well-rationalized definitive medical opinion establishing a causal link. Dr. Pelletier notes in his January 29, 2009 report, "It is my opinion and without any previous history with regard to his back and considering the findings at surgery, [the April 2008 incident] was a competent producing cause of [appellant's] need for surgery and continuing disability, which basically is residual musculigamentous pain that is gradually resolving." When discussing appellant's history in this report, Dr. Pelletier notes that he reviewed the reports of Dr. Purcell. Dr. Krastins, in reports countersigned by Dr. Purcell, noted that appellant had a past medical history of chronic left lower back pain. As Dr. Pelletier fails to reconcile his opinion on causal relationship with appellant's prior history of chronic lower back pain, his opinion with regard to causal relationship is not rationalized.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>6</sup> There is insufficient medical evidence to establish that

---

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *John D. Jackson*, 55 ECAB 465 (2004).

appellant sustained an injury causally related to his federal employment, as alleged. Accordingly, the Board finds that appellant failed to meet his burden of proof.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty on April 4, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 29, 2009 and November 19 and June 12, 2008 are affirmed.

Issued: May 19, 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