



## **FACTUAL HISTORY**

On March 20, 2007 appellant, then a 42-year-old contact representative, slipped and fell on ice as he was walking to his car at the end of the workday. In a May 16, 2007 decision, the Office found that he did not sustain an injury in the performance of duty and in a December 13, 2007, an Office hearing representative found the incident occurred in the performance of duty, but that the medical evidence of record was insufficient to establish causal relationship. Appellant thereafter requested reconsideration and by decision dated June 12, 2008, the Office accepted that he sustained a lumbar strain and contusion of the coccyx and sacrum caused by the March 20, 2007 slip and fall. The Office found that his claimed cervical condition was not causally related to the March 2007 fall.

Appellant, through his attorney, requested reconsideration, asserting that the cervical condition was caused by the work injury and the Office referred appellant to Dr. Steven J. Valentino, a Board-certified osteopath specializing in orthopedic surgery. In an October 21, 2008 report, Dr. Valentino noted that appellant returned to work on February 19, 2008. He provided examination findings, diagnosed resolved injury to the sacrum and coccyx and advised that all disability ended on March 9, 2008 in regard to the March 20, 2007 employment injury. In an attached work capacity evaluation, he advised that appellant could perform his usual job duties with no limitations.<sup>1</sup>

By decision dated April 9, 2009, the Office denied appellant's claim for a cervical strain and aggravation of degenerative arthritis.

Appellant, through his attorney, timely requested a hearing that was held on July 21, 2009. He described the March 20, 2007 injury, stating that he made a special effort not to strike his head when he fell. Appellant acknowledged that he was in two motor vehicle accidents, one in July 2008 and one in September 2008, which aggravated his neck and lower back conditions. The hearing representative asked that appellant provide prior magnetic resonance imaging (MRI) scan and electromyography (EMG) test results.

The medical evidence relevant to the claimed cervical condition includes a report dated April 23, 2004 in which a chiropractor advised that appellant was in a severe motor vehicle accident resulting in an acute sprain/strain of the cervical and lumbar spines and could not work.<sup>2</sup> In a March 21, 2007 emergency room report, Dr. James Doghramji, a Board-certified internist, noted a history that appellant slipped and fell on ice and was complaining of low back pain. He reported that on examination the neck was supple and nontender with normal range of motion and no spasm and diagnosed fracture of the coccyx-sacrum.<sup>3</sup> In reports dated April 3 and 17 and May 11, 2007, Dr. Michael F. Cavanaugh, Board-certified in orthopedic surgery, noted a history that appellant was in a motor vehicle accident in 2001 and injured his lower back when he slipped and fell on ice in March 2007 when he also strained his upper back trying to avoid an

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<sup>1</sup> Appellant was paid compensation for the period May 8, 2007 through February 19, 2008.

<sup>2</sup> The doctor's signature is illegible.

<sup>3</sup> A March 21, 2007 x-ray demonstrated a slightly displaced fracture at the junction of the sacrum and coccyx.

impact on his head. He reported appellant's complaints of low and mid-thoracic pain and spasms and provided examination findings, noting tenderness of the thoracic and lumbar spines and reported x-ray findings of degenerative disc disease of the thoracic spine. Dr. Cavanaugh diagnosed fracture of the sacrum and thoracolumbar strain. On May 11, 2007 he advised that appellant could return to his regular sedentary duty. Appellant also submitted a number of disability slips and reports from Matthew Cadwallader, a physician's assistant, dated April 12 to May 11, 2007.

In a July 25, 2007 report, Dr. Maxwell Stepanuk, Jr., a Board-certified osteopath specializing in orthopedic surgery, noted the history of injury and appellant's complaint of lumbar and sacral pain. He provided examination findings, diagnosed lumbar strain and sprain and probable coccygeal fracture and advised that appellant could return to modified duty. In a November 28, 2007 report, Dr. Stepanuk advised that appellant was complaining of cervical pain that began five days previously with paresthesias and numbness radiating down the left arm into his thumb and diagnosed resolved lumbar strain and sprain, dorsal strain and sprain and probable coccygeal fracture. On January 25 and April 9, 2008 he reiterated his diagnoses and by report dated May 13, 2008, Dr. Stepanuk stated:

“[Appellant] also related today that he has been complaining of cervical pain ever since his fall. Evidently he failed to mention this to me when I evaluated him previously. [Appellant] states that he injured his neck when he tried to protect himself from striking his head when he fell backwards. He has also been complaining of numbness radiating down his left arm into his thumb.”

Dr. Stepanuk advised that he reviewed an MRI scan of the cervical spine that showed a disc bulge at C3 and C6 with a herniation at C4 and C5. Physical examination demonstrated pain upon palpation of the cervical paravertebral musculature and a negative Tinel's, Phalen's and compression sign with no loss of sensation. Dr. Stepanuk additionally diagnosed cervical strain and sprain, cervical pain secondary to disc bulge and herniation and left upper extremity radiculopathy. He recommended an EMG study and a repeat MRI scan and concluded that appellant's cervical symptoms and left upper extremity radicular symptoms were directly related to his fall on March 20, 2007. On July 8, 2008 Dr. Stepanuk advised that the cervical MRI scan was performed on December 21, 2007 and noted that appellant denied a history of a prior neck injury and that the mechanism of injury was consistent with a cervical injury since his legs went out from under him when he fell backwards. In a September 15, 2008 report, he advised that a recent EMG study was normal. Dr. Stepanuk stated that appellant was a poor historian and had trouble verbalizing his history, but that he believed him when he stated that he injured his cervical spine when he fell, opining that the disc bulges and herniations were either caused by or aggravated by the March 20, 2007 fall. In reports dated February 18 and August 19, 2009, he noted appellant's continued complaints of cervical, dorsal and lumbar pain and that a February 2, 2009 MRI scan study of the cervical spine demonstrated a disc osteophyte complex at C4 and C6 with a disc protrusion at C5. Physical examination demonstrated pain on palpation of the cervical and lumbar paravertebral musculature.

Dr. Stepanuk referred appellant for chiropractic therapy. In numerous reports dated from June 5, 2007 to February 28, 2008, Dr. David J. Craven, a chiropractor, noted appellant's chief

complaint of mid and low back pain. He diagnosed coccygeal fracture with sprain/strain and lumbosacral subluxation and thoracic sprain/strain and thoracic subluxation.

In his second opinion evaluation dated October 21, 2008, Dr. Valentino noted that, after the March 20, 2007 employment injury, appellant complained of low back and neck pain. He reported that appellant returned to work on February 19, 2008, had been in a motor vehicle accident in July 2008 and was seeing Dr. Himmelstein, a chiropractor. Dr. Valentino advised that on examination range of motion of the cervical, thoracic and lumbar regions was complete, and motor and sensory examinations were normal. He diagnosed resolved injury to the sacrum and coccyx and advised that appellant had completely recovered from the March 20, 2007 employment injury.

In a September 30, 2009 decision, an Office hearing representative affirmed the April 9, 2009 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>5</sup>

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>6</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>6</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant sustained a lumbar strain and contusion of the coccyx and sacrum caused by the March 20, 2007 slip and fall and denied appellant's claim that his cervical condition was also caused by the employment injury. The Board finds that medical evidence of record does not establish that appellant has a cervical condition causally related to the March 20, 2007 employment injury.

The fact that a condition arises after an injury and was not present before an injury is not sufficient to support causal relationship<sup>11</sup> and an employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>12</sup> The medical evidence most contemporaneous with the March 20, 2007 employment injury does not mention a cervical injury or condition. The emergency room report dated March 21, 2007 merely noted the history of injury and that appellant was complaining of low back pain. In reports dated April 3 to May 11, 2007, Dr. Cavanaugh reported a history that appellant was involved in a motor vehicle accident in 2001 and noted no complaints of a cervical injury. He diagnosed a fracture of the sacrum and thoracolumbar strain. Likewise, Dr. Craven, a chiropractor, who treated appellant from June 5, 2007 to February 28, 2008 did not mention cervical complaints or findings.<sup>13</sup>

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<sup>8</sup> *D.G.*, 59 ECAB 734 (2008).

<sup>9</sup> *Id.*

<sup>10</sup> *Roy L. Humphrey*, *supra* note 5.

<sup>11</sup> *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *S.P.*, 59 ECAB 184 (2007).

<sup>13</sup> Dr. Stepanuk referred appellant for chiropractic therapy. Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. *A.O.*, 60 ECAB \_\_\_\_ (Docket No. 08-580, issued January 28, 2009). Office regulations provide that a chiropractor may provide services in the nature of physical therapy under the direction of a qualified physician. *Sean O'Connell*, 56 ECAB 195 (2004).

Dr. Stepanuk related on November 28, 2007 that appellant was complaining of cervical pain of five days' duration and on May 13, 2008 noted MRI scan findings of disc bulges and herniation and stated that he reported cervical pain ever since the fall and advised that his cervical findings were caused by him trying to protect his head when he fell. He also reported that appellant was a poor historian. Dr. Stepanuk, however, did not note a history of the previous motor vehicle accident or accidents and the record includes Dr. Cavanaugh's report of a 2001 motor vehicle accident and a medical report describing a diagnosed cervical strain following a motor vehicle accident in 2004. Medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value.<sup>14</sup> There is also no evidence of record that appellant had diagnostic testing of the cervical spine until December 2007 almost nine months after the March 20, 2007 employment injury. When diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee. The greater the delay in testing the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on the testing, such delay diminishes the probative value of the opinion offered.<sup>15</sup> The Board, therefore, finds the reports of Dr. Stepanuk insufficient to establish that appellant's claimed cervical condition was caused by the March 20, 2007 employment injury.

Appellant also submitted a number of disability slips and reports from Matthew Cadwallader, the physician's assistant, dated April 12 to May 11, 2007. As registered nurses, licensed practical nurses and physicians' assistants are not "physicians" as defined under the Federal Employees' Compensation Act, their opinions are of no probative value.<sup>16</sup>

The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>17</sup> There is no rationalized medical evidence to explain why appellant's cervical condition would have developed eight to nine months after the employment injury, when he had no complaints or findings up until that time. Accordingly, appellant has failed to meet his burden of proof to show that he sustained a cervical condition on March 20, 2007 and the medical evidence is insufficient to require further development of the claim.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a cervical condition causally related to the March 20, 2007 employment injury.

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<sup>14</sup> *M.W.*, 57 ECAB 710 (2006).

<sup>15</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>16</sup> *Roy L. Humphrey*, *supra* note 5.

<sup>17</sup> *See Conard Hightower*, 54 ECAB 796 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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