



repetitious movement and additional reaching beyond the front ledge, placing added stress on her back and arms.<sup>1</sup>

In a statement accompanying her claim (Form CA-1), appellant indicated that, because of the design of the new case, which was larger than the one she previously used, she had to reach farther with her left arm and was unable to use her stool. She had to get up constantly to put mail into the buckets and constantly walk back and put box mail behind her. These movements all created stress on appellant's back and left arm. On September 10, 2008 appellant tried to work but she had to leave work due to continuing pain.

The employing establishment controverted appellant's claim. It contended that she had failed to report the alleged injury promptly and the measurements of the new case were in keeping with her restrictions.

On September 26, 2008 the Office informed appellant that the evidence and information submitted was insufficient to establish that she had experienced the incident as alleged or that she had a diagnosed condition that resulted from the incident. Appellant was advised to submit medical evidence which provided a diagnosis and a rationalized opinion explaining how the alleged incident caused the diagnosed condition.

Appellant submitted reports and disability slips for the period September 10 through October 21, 2008 from Dr. Imad Tahboub, a Board-certified internist. On September 10, 2008 Dr. Tahboub diagnosed neck and shoulder pain and degenerative joint and disc disease. He recommended that appellant be placed on sick leave for three days. On September 15, 2008 Dr. Tahboub placed her off work until September 29, 2008 for persistent, severe neck and arm pain, degenerative joint disease (DJD) and disc disease. A September 22, 2008 duty status report notes that appellant was "attempting to sort flat mail, causing back pain, left arm and shoulder." Dr. Tahboub diagnosed right medial epicondylitis with disc disease, right shoulder and elbow and identified the date of injury as September 9, 2008. In a September 22, 2008 attending physician's report, he opined that appellant was totally disabled from September 10 through 29, 2008. Notes dated September 22 and October 21, 2008 reflect that Dr. Tahboub examined her on those dates and contain a diagnosis of herniated disc.

In an October 13, 2008 report, Dr. Nael M. Tarakji, a Board-certified neurologist, stated that appellant "hurt her back with significant back pain radiating to lower extremity." He noted that the back pain was associated with numbness and tingling involving the lateral aspect of the leg, more on the right than the left with muscle spasm. A recent magnetic resonance imaging (MRI) scan of the lumbar spine showed central canal stenosis at the level of L3-L4 with right disc herniation at L3-L4 and L4-L5 without nerve root compression, but facet joint disease from L3 to S1. The thoracic spine MRI scan showed multiple disc herniations, worse at T6-T7 on the left and T7-T8 on the right. Dr. Tarakji recommended that appellant apply for permanent disability.

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<sup>1</sup> The Office accepted an earlier claim of appellant's for a November 23, 2005 occupational disease claim for displacement and degeneration of a cervical intervertebral disc.

Appellant submitted an October 14, 2008 report from Dr. Jawad A. Shah, a Board-certified neurological surgeon. She told him that working on a new and larger case at work on September 9, 2008 put a strain on her back. Dr. Shah reviewed a recent MRI scan, which revealed diffuse disc bulges without compromise to any neurological elements. He diagnosed cervicalgia and lumbago.

Appellant submitted work excuses dated October 9 and 27, 2008 from Dr. James T.S. Rhyee, a treating physician, reflecting that she was in his office on those dates. The record contains a September 23, 2008 report of an electromyogram and nerve conduction study and October 2, 2008 reports of MRI scans of the lumbar and thoracic spine.

By decision dated November 5, 2008, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that her claimed medical condition was causally related to the established work-related event. On August 27, 2009 appellant requested reconsideration.

Appellant submitted a November 11, 2008 report from Dr. Tahboub, who described her employment activities, noting that she had previous permanent restrictions including five-pound lifting limits, no repetitive movement with right arm, no twisting or bending and no forceful pushing, pulling or extreme outward reaching. During a September 10, 2008 examination, she complained of pain in the neck, shoulders, back and arms that had been aggravated by sudden changes in her work, which did not comply with her restrictions. On September 22, 2008 appellant described pain in the center of her back and lower back and into her buttocks and hips. Dr. Tahboub opined that the changes in appellant's work activities aggravated her pain and may have resulted in new spinal herniations.

In a December 12, 2008 duty status report, Dr. Tarakji indicated by placing a checkmark in the "yes" box his opinion that appellant's multiple disc herniations were due to her September 9, 2008 injury. He stated that she was permanently disabled from work. On May 7, 2009 Dr. Tarakji stated that appellant had neck and back pain, as well as shoulder and arm pain, associated with right-sided elbow pain and numbness involving the hands. He opined that her injury was "work related over the years." On August 5, 2009 Dr. Tarakji certified that he had been treating appellant for her September 9, 2009 work-related injury to her lower back, in the form of strain to the lower back resulting in back pain radiating to the lower extremities. An MRI scan study of the lumbar spine showed degenerative lumbar spine disease with multiple herniated discs at the level of L3-L4 and L4-L5. Appellant also had multiple disc herniations in the thoracic area causing degenerative lumbar spine disease with radicular-type symptoms to the lower extremities. Dr. Tarakji diagnosed mid- and low-back pain with evidence of multiple herniated discs, bilateral carpal tunnel syndrome, tennis elbow and cervical degenerative spine disease.

In a narrative report dated October 26, 2009, Dr. Tahboub opined that appellant's work activities on September 9, 2008 caused or contributed to her herniated disc and left medial epicondylitis conditions. He stated that she was working on a new sorting case, which was wider and deeper than the case it replaced and required her to stretch and turn constantly while sorting mail. By the end of appellant's morning shift, her upper back was throbbing. Dr. Tahboub opined that her herniated disc and left medial epicondylitis conditions were caused by being

forced to lean forward while sorting the mail for three hours on the date in question. Left medial epicondylitis became noticeable when appellant was required to extend her arm repetitively for hours during the morning sorting. Appellant had not experienced the sharp pain in the elbow outward prior to the occurrence. Dr. Tahboub found weakness of limbs, back and neck as well as some numbness extending into the lower extremities, more on the right, as well as constant sharp, throbbing, achy pain. Appellant was unable to grip well, push and pull, lift or stoop for any length of time. Areas of pain become more intense when unable to rest.

Appellant submitted an August 5, 2009 report from Dr. James Culver, a Board-certified anesthesiologist, who stated that he had initially treated her on November 11, 2008 for chest wall pain, due to disc herniation and thoracic radiation. Dr. Culver noted that she had sustained an injury on the morning of September 9, 2008 while sorting mail using a newly installed sorting case.

Appellant submitted a November 14, 2008 report from Dr. David A. Fernandez, a Board-certified orthopedic surgeon, who described the history of injury, as reported by appellant. On September 9, 2008 she began working on a new sorting base, which required extended movement to sort the mail and created added strain on her left arm, back and neck. Appellant's standing during her shift, with constant back and forth movement, put a strain on her entire back. A review of the cervical, lumbar and thoracic MRI scans revealed diffused disc bulges without compromise to any of the neurological elements. On examination, paraspinal tone was intact. Appellant's right arm had decreased active abduction. She had full passive motion; decreased active flexion, but full passive flexion. On the left arm, appellant had decreased active abduction and flexion, but full passive abduction and flexion. A neurological examination revealed intact cranial nerves II-XII. Deep tendon reflexes were 2+ at the biceps, brachioradialis, triceps, knees and ankles bilaterally. Sensory examination was normal bilaterally. Motor strength was 5/5 at C5 through T8 bilaterally. Appellant was point tender to palpation over the medial epicondyle and the elbows bilaterally. Dr. Fernandez diagnosed cervical spondylosis, cervical degenerative disc disease and bilateral medial epicondylitis. He opined that "the repetitive action and motion certainly contributed to her left medial epicondylitis."

On August 21, 2009 Dr. Fernandez attempted to clarify his November 14, 2008 report. He stated that, at the end of the morning sorting of mail on September 9, 2008, appellant first noticed burning pain in her left elbow, as well as a throbbing and dull type of pain that extended down her arm. Dr. Fernandez described a new sorting case that required her to stand and turn constantly and to do extended repetitive reaching with her left arm. He opined that the left medial epicondylitis was consistent with a work injury, given appellant's new job requirements and the stresses on the left elbow.

In an undated statement, appellant asserted that her left elbow, thoracic spine and lumbar spine conditions began on September 9, 2009, due to her employment activities on the new sorting case.

By decision dated December 1, 2009, the Office denied modification of its October 5, 2008 decision on the grounds that the medical evidence was not sufficiently rationalized to establish that appellant's condition was causally related to the established work-related events.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>3</sup>

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>5</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship.<sup>7</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 a causal relationship.<sup>8</sup> Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>4</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>5</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

<sup>6</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>9</sup> 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>10</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of her claim. However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>11</sup>

The Office accepted that the September 9, 2008 casing activities occurred as alleged, but found that the medical evidence of record was insufficient to establish that any of appellant's diagnosed conditions was causally related to the established incidents. The Board finds, however, that the medical evidence of record supports that she sustained a work-related injury on September 9, 2008.

Dr. Fernandez demonstrated a clear understanding of appellant's work activities on September 9, 2008 on the new sorting case, which required her to stand and turn constantly and to do extended repetitive reaching with her left arm. He diagnosed cervical spondylosis, cervical degenerative disc disease and bilateral medial epicondylitis and opined that "the repetitive action and motion certainly contributed to her left medial epicondylitis." Dr. Fernandez did not fully explain how appellant's activities on the new casing machine were competent to cause her diagnosed conditions. The reports do, however, support that appellant's employment duties on the date in question contributed to her left elbow condition.

Dr. Tahboub, who began treating appellant on September 10, 2008, the day following the accepted incident, provided a complete and accurate factual background. On November 11, 2008 he opined that the changes in her work activities aggravated her back pain and may have resulted in new spinal herniations. On October 26, 2009 Dr. Tahboub provided examination findings and opined that appellant's work activities on September 9, 2008 caused or contributed to her herniated disc and left medial epicondylitis conditions. As appellant's new sorting case was wider and deeper than the case it replaced, it forced her to lean forward, stretch and turn

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<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

constantly while sorting the mail for three hours on the date in question. Her left medial epicondylitis became noticeable when she was required to extend her arm repetitively during the morning sorting. Although Dr. Tahboub did not provide a fully-rationalized opinion as to the nature of the relationship between the claimed conditions and the September 9, 2008 work incident, he did discuss appellant's work requirements as they related to the new case sorter on that date and explained how those activities would have caused or exacerbated her diagnosed conditions. Thus, his reports provide support for her claim.

Dr. Tarakji diagnosed mid- and low-back pain with evidence of multiple herniated discs, bilateral carpal tunnel syndrome, tennis elbow and cervical degenerative spine disease. In a December 12, 2008 duty status report, he indicated by placing a checkmark in the "yes" box his opinion that appellant's multiple disc herniations were due to her September 9, 2008 injury. On May 7, 2009 Dr. Tarakji opined that her injury was "work related over the years." On August 5, 2009 he certified that he had been treating appellant for her September 9, 2009 work-related injury to her lower back, in the form of strain to the lower back resulting in back pain radiating to the lower extremities. An MRI scan study of the lumbar spine showed degenerative lumbar spine disease with multiple herniated discs at the level of L3-L4 and L4-L5. Appellant also had multiple disc herniations in the thoracic area causing degenerative lumbar spine disease with radicular-type symptoms to the lower extremities. Dr. Tarakji's opinion is of diminished probative value, as he failed to explain how the accepted work activities caused or aggravated her diagnosed conditions. His reports are, however, consistent with the factual and medical evidence of record and strongly suggest that appellant's diagnosed conditions were at least aggravated by the events of September 9, 2008.

The remaining medical evidence of record also supports appellant's claim. On October 14, 2008 Dr. Shah reported that her work activities on a new and larger case at work on September 9, 2008 put a strain on her back. He reviewed a recent MRI scan, which revealed diffuse disc bulges without compromise to any neurological elements and diagnosed cervicgia and lumbago. On August 5, 2009 Dr. Culver noted that he initially treated appellant on November 11, 2008 for chest wall pain, due to disc herniation and thoracic radiation. He stated that she sustained an injury on the morning of September 9, 2008 while sorting mail using a newly installed sorting case. Although neither physician explained with sufficient medical rationale how appellant's current condition was caused by the September 9, 2008 incident, the history of injury provided, in conjunction with her pain and the physicians' diagnoses, support her claim that she sustained an injury on the date in question.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related injury and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her claimed condition and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>12</sup> On remand, the Office shall obtain a rationalized opinion from a qualified

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<sup>12</sup> See *Virginia Richard, id.*; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

physician as to whether appellant's current condition is causally related to the accepted incident and shall issue an appropriate decision in order to protect her rights of appeal.

**CONCLUSION**

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a traumatic injury in the performance of duty on September 9, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: January 18, 2011  
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