



radiated to her left leg, due to performing routine job tasks for 12 months. She became aware of her condition and its relationship to her employment on June 18, 2008.<sup>2</sup> Appellant stopped work on June 2, 2009 and returned on an intermittent basis beginning July 22, 2009. She has remained off work since February 2010.

In a November 16, 2009 medical report, Dr. Nilesh M. Patel, a Board-certified orthopedic surgeon, related that appellant experienced back pain after she twisted to bend and pick up a bag at work approximately one-and-a-half to two years earlier. Appellant's pain subsequently radiated to her leg while undergoing physical therapy. She was diagnosed with lumbar spinal stenosis and spondylolisthesis with dynamic instability. Dr. Patel opined, "We do not have any imaging prior to [appellant's] work injury in order to determine causality but at the very minimum, this can be considered a clinical exacerbation of her potentially preexisting condition." A November 12, 2009 note signed by a physical therapist confirmed that appellant participated in several therapy sessions in January 2009.

The Office informed appellant in a November 30, 2009 letter that the evidence submitted was insufficient and advised her about the evidence needed to establish her claim.

In a December 20, 2009 statement, appellant detailed that she worked 40 hours per week screening passengers and baggage, monitoring entry and exit points and performing other security tasks.

Dr. Patel stated in a December 15, 2009 attending physician's report that appellant fell at work and "twisted" on June 15, 2008. He diagnosed lumbar stenosis and congenital spondylolisthesis and proposed L4-L5 lumbar fusion surgery. Dr. Patel checked "yes" in response to a form question asking whether the condition was employment related and explained that appellant had been lifting bins at a security checkpoint at the time of injury.

In an undated report, Dr. Patel remarked that appellant sustained a back and hip injury on June 18, 2008 after twisting, bending and picking up a bag at work. A magnetic resonance imaging (MRI) scan exhibited bilateral foraminal stenosis with facet hypertrophy and dynamic, grade I spondylolisthesis of the L5-S1 as well as minor facet arthrosis of the L4-L5. Dr. Patel recommended L5-S1 laminectomy, decompression and fusion surgery.

By decision dated January 26, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to demonstrate that employment factors caused or aggravated a back condition.

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<sup>2</sup> Appellant previously filed a traumatic injury claim on July 18, 2008, which was accepted for face and scalp contusions and right knee and leg sprains. She later filed a notice of recurrence, which was administratively converted to a new traumatic injury claim and accepted without review for limited time and medical expense.

In a February 26, 2010 report, Dr. Patel noted that appellant underwent L5-S1 transforaminal lumbar interbody fusion surgery on February 3, 2010. He opined that her lumbar spine symptoms arose from a June 18, 2008 work event involving twisting and lifting. Dr. Patel specified:

“I do not feel that [appellant’s] degenerative condition of spondylolisthesis and facet arthrosis developed due to that specific incident, but that incident had caused a clinical exacerbation of a preexisting anatomical condition. In [l]ayman’s terms, [her] degenerative condition may well have existed prior to the incident on June 18, 2008, but [was] not symptomatic until the episode that occurred at work. For this reason, I do feel that [appellant’s] symptoms are causally related to the work incident as far as an exacerbation of a preexisting degenerative condition.”

Appellant requested an oral telephonic hearing, which was held on June 1, 2010. At the hearing, she testified that she initially injured her back on June 18, 2008 while she was lifting and moving bins to a security checkpoint. Prior to this, appellant had been screening passengers and baggage. She noted that Dr. Patel incorrectly listed June 15, 2008 as the date of injury in one of his reports. On July 25, 2008 appellant was in the middle of performing her regular duties when her back pain flared up. Before her February 3, 2010 surgery, she continued to work, pointing out that heavy lifting, bending, walking and standing for prolonged periods caused further pain. A February 3, 2010 surgical report from Dr. Patel described appellant’s L5-S1 posterolateral and interbody fusion, laminectomy and bilateral foraminotomy procedures. He postoperatively diagnosed L5-S1 spondylolisthesis and stenosis.<sup>3</sup>

On July 14, 2010 the Office hearing representative affirmed the January 26, 2010 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>6</sup> To establish fact of injury in an

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<sup>3</sup> Appellant also submitted medical reports pertaining to conditions other than her claimed back condition.

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

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *See S.P.*, 59 ECAB 184, 188 (2007).

occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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>8</sup>

### ANALYSIS

The evidence supports that appellant routinely screened passengers and baggage, monitored entry and exit points, lifted and moved bins and performed other tasks that entailed bending, walking and standing for prolonged periods. The record also contains firm medical diagnoses of lumbar stenosis, spondylolisthesis and facet arthrosis. Nevertheless, appellant did not furnish sufficient medical evidence demonstrating that the described employment factors aggravated her preexisting condition.

In a November 16, 2009 report, Dr. Patel related that appellant's initial back injury occurred sometime in 2007 or 2008 due to twisting, bending and picking up a bag at the employing establishment. He concluded that she exacerbated a "potentially preexisting condition." Dr. Patel added in a December 15, 2009 attending physician's report that appellant sustained lumbar stenosis and congenital spondylolisthesis on June 15, 2008 as a result of falling, twisting and lifting bins at a security checkpoint. In a February 26, 2010 report, he clarified that the employment incident actually transpired on June 18, 2008 and reiterated that her condition was causally related since she had been asymptomatic before then.<sup>9</sup> Although Dr. Patel had several opportunities to do so, he failed to provide medical rationale explaining how twisting, bending and lifting baggage pathophysiologically aggravated appellant's condition.<sup>10</sup> The mere assertion that appellant was asymptomatic before June 18, 2008 and symptomatic afterward, by

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<sup>7</sup> *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see R.R.*, Docket No. 08-2010 (issued April 3, 2009).

<sup>8</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 5 at 352.

<sup>9</sup> The Board notes that Dr. Patel's reports suggested that appellant's condition developed during a single workday or shift rather than over a period of time. This reasoning is more consistent with a claim for traumatic injury than one for occupational disease. *See* 20 C.F.R. § 10.5(q) & (ee).

<sup>10</sup> *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). Moreover, Dr. Patel failed to discuss many of the contributing factors identified by appellant, including passenger and baggage screening, entry and exit point monitoring, walking and standing for prolonged periods. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

itself, cannot establish causal relationship.<sup>11</sup> Furthermore, the Board points out that while Dr. Patel's December 15, 2009 report mentioned "falling" as a work factor, the rest of the record does not corroborate that she made this allegation.<sup>12</sup>

Dr. Patel's remaining reports were of diminished probative value because they did not offer an opinion regarding the cause of injury.<sup>13</sup> Finally, a physical therapist's November 12, 2009 note cannot constitute medical evidence because a physical therapist is not a "physician" as defined under the Act.<sup>14</sup>

Appellant argues on appeal that the Office's July 14, 2010 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently explain how the employment factors caused or aggravated her lumbar stenosis, spondylolisthesis and facet arthrosis. In the absence of well-reasoned medical opinion explaining this relationship, appellant failed to meet her burden.

### CONCLUSION

The Board finds that appellant did not establish that she sustained an occupational disease in the performance of duty.

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<sup>11</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009). See also *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> See *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

<sup>13</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>14</sup> 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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