

physical restrictions but did not receive any assistance. Appellant aggravated the previous back injury while pulling trays from the back of his truck from 4:30 p.m. until 7:00 p.m. His supervisor, Kenneth Stevenson, was notified on November 6, 2008 and controverted continuation of pay (COP) because appellant reaggravated a previous back injury.

Appellant submitted an October 20, 2008 excuse slip by Dr. David J. Tolner, a Board-certified neurosurgeon, treated appellant that day and advised that he was unable to return to work because he was pending discography.”

On November 24, 2008 the Office requested additional factual and medical information from appellant. It allotted 30 days to submit additional evidence and respond to its inquiries.

In an October 20, 2008 medical report, Dr. Tolner noted that, although appellant’s work description had been revised several times, appellant did not have any assistance at work and aggravated his back condition after lifting a particular load of mail. He reported that appellant’s postoperative magnetic resonance imaging (MRI) scan and x-rays “look fine.” Dr. Tolner noted that appellant may possibly have “a discopathic pain generation.” He also had a discussion with him about his weight, which Dr. Tolner stated was excessive and “certainly would give anybody back pain.” Dr. Tolner stated that appellant’s back pain seemed to be a “recurrence.”

On December 18, 2008 the Office received a narrative statement from appellant who reiterated that he injured his back on October 14, 2008 in the performance of duty. Appellant described his employment activities as “constant twisting on a 180-degree axis” when pulling, lifting and carrying 25- to 40-pound trays. On October 14, 2008 he was supposed to have assistance, but it never arrived and he worked for five hours with no break. Appellant had a previous back injury in February 2007 which required physical therapy and surgery. He had “two major herniated discs and two discs pressing against the root of [his] sciatic nerve.” Appellant provided his postmaster a list of his restrictions, but Mr. Stevenson and union representative were told that he had no restrictions.

By decision dated December 31, 2008, the Office denied appellant’s claim finding that the medical evidence submitted was insufficient to establish fact of injury. It found that the described employment activities occurred as alleged; but the medical evidence provided no firm diagnosis or establishes causal relationship.

On February 18, 2009 appellant requested reconsideration and submitted a narrative statement to the Office. He was injured on October 14, 2008 and went to see Dr. Tolner, who advised him not to return to work until he had a discography of his back. Appellant stated that his claim was denied before his discography was completed.

By decision dated March 3, 2009, the Office denied appellant’s request for reconsideration on the basis that he did not raise any substantive legal questions or submit relevant and pertinent new evidence.

On November 28, 2009 appellant requested reconsideration. He submitted a July 23, 2007 report by Dr. Rogers L. Lewis, a Board-certified radiologist, who noted that appellant’s x-ray showed “[m]ultilevel mild degenerative disc disease and spondylosis” and no acute

abnormality. In a June 4, 2008 report, Dr. Heidi T. Siuta, a radiologist, advised that appellant's x-ray showed a postpartial laminectomy on the right at L5.

Dr. Monica Watkins, a Board-certified radiologist, reported on June 13, 2008 that appellant's MRI scan showed that the "previously seen right paracentral/posterolateral disc protrusion has been resected" after his March 7, 2007 right-sided hemilaminectomy at L5-S1. She indicated that the thecal sac was slightly deviated toward the right with the fat within the left dorsal epidural space appearing more prominent. There was no significant central canal stenosis and minimal bilateral foraminal stenosis. Dr. Watkins reported "minimal disc bulge, facet hypertrophy without significant central canal or foraminal stenosis" at the L4-5 level.

In a February 2, 2009 report, Dr. Varanda Nargund, a Board-certified anesthesiologist and pain medicine specialist, advised that he conducted a provocative discography on appellant's lumbar spine at L3-4, L4-5 and L5-S1. The L5-S1 endpoint was not firm, the L5-S1 level was consistent with appellant's pain and reproduced back and leg pain, and the L5-S1 appeared to have "[v]ery degenerated disc height" with bilateral annular tears.

Appellant also submitted reports dated July 11, 2007 to February 9, 2009 by Dr. Tolner. On July 11, 2007 Dr. Tolner reported that appellant complained of some on-again, off-again pain in his back with lumbar strains. Appellant stated that, on February 15, 2007, "the day after an ice storm on Valentine's Day, he was doing his usual rounds and making his postal deliveries, but one of the court lanes was not plowed by the county" so he walked instead of driving and slipped on ice and fell on his back and buttocks. He also reported falling again that day while trying to get back into his truck. Appellant reported the falls to Mr. Stevenson. The next day, he reported more back pain. Two days after his fall, appellant reported severe right leg pain. Dr. Tolner diagnosed right-sided L5-S1 disc herniation with a "disc fragment that goes up into the right L5 neural foramen, as well as compressing and displacing the right S1 nerve root." He described appellant's right L5 and S1 radicular pain as "typical" and reported no symptoms in his left leg. Upon examination, appellant had decreased sensation in the right L5 and S1 nerve root distribution. He noted that the MRI scan report was very clear and the radiologist was "extraordinarily definitive in her description of the disc herniation, in fact [she] went out of her way to point out it was not only a disc herniation, but there was compression of the S1 nerve root, which was really above and beyond, clearly [indicating that she] was quite impressed."

On March 7, 2008 Dr. Tolner performed surgery for a right, L5-S1 discectomy with extensive right L5 and S1 foraminotomies.

On June 25, 2008 Dr. Tolner reported that appellant's postoperative MRI scan of his low back "could not look better" and that the disc herniation, was gone. He noted that a radiologist concurred with his assessment and reported that appellant's neurological examination regarding his legs was "virtually normal." Dr. Tolner advised that at appellant's "weight and with his years of wear and tear, he should not return as a letter carrier" and recommended an administrative position where he would not have to lift anything over 25 pounds.

On August 6, 2008 Dr. Tolner indicated that appellant gained weight since his back problem first began over six months prior. He advised him that, if he lost between 60 and 100 pounds, his back pain would improve.

On February 9, 2009 Dr. Tolner diagnosed severe degenerative disc disease with a completely incompetent disc at L5-S1 and an annular tear at L4-5. He also noted severe lumbar spondylosis, degenerative disc disease, lumbar radiculopathies, incompetent motion segment and discopathic pain generators. Dr. Tolner advised that appellant would need surgery for an L4-5 complete decompression and an L4-S1 fusion.

By decision dated February 19, 2010, the Office denied modification of the March 3, 2009 decision. It found that appellant did not submit sufficient medical opinion evidence explaining how his back condition was related to the October 14, 2008 employment incident.

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, 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 injury² was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁴

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty

¹ 5 U.S.C. §§ 8101-8193.

² The Office's regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

³ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Id.* See *John J. Carlone*, 41 ECAB 354 (1989); *Shirley A. Temple*, 48 ECAB 404 (1997).

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 employee.⁵

ANALYSIS

The Office accepted that the employment incident of October 14, 2008 occurred at the time, place and in the manner alleged. The issue is whether the October 14, 2008 employment incident caused or contributed to appellant's back condition. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between his low back and the October 14, 2008 employment incident.

On July 11, 2007 Dr. Tolner first diagnosed a right-sided L5-S1 disc herniation with a disc fragment into the right L5 neural foramen, as well as compression the right S1 nerve root. He described appellant's right L5 and S1 radicular pain as "typical" and reported no symptoms in appellant's left leg. On March 7, 2008 Dr. Tolner performed a right, L5-S1 discectomy and extensive right L5 and S1 foraminotomies. On June 25, 2008 he reported that appellant's postoperative follow-up MRI scan established that the disc herniation was gone. Although appellant was not to return as a regular letter carrier, Dr. Tolner recommended work where appellant did not have to lift over 25 pounds. He also indicated that appellant had gained weight and he advised appellant that his low back condition would improve if he lost weight. This evidence establishes that prior to the October 14, 2008 incident at work appellant had a preexisting lumbar condition for which he underwent surgery. The issue is whether the accepted incident aggravated his condition.

Although Dr. Tolner reported on October 20, 2008 that appellant aggravated his back condition at work, he did not adequately explain the employment incident aggravated appellant's back condition. His treatment note of that day did not include a history of the October 14, 2008 incident. On February 9, 2009 Dr. Tolner diagnosed appellant with severe degenerative disc disease which was worse than he had anticipated, with a completely incompetent disc at L5-S1, an annular tear at L4-5, severe lumbar spondylosis, degenerative disc disease, lumbar radiculopathies, incompetent motion segment and discopathic pain generators. He advised that appellant would need further surgery for an L4-5 complete decompression and an L4-S1 fusion. Although Dr. Tolner provided a firm diagnosis, he failed to directly address the issue of causal relationship. He did not adequately explain how any changes to appellant's low back were caused by the October 14, 2008 incident in which appellant pulled mail trays. Dr. Tolner did not address any changes between appellant's postoperative diagnostic tests and the discography study obtained on February 2, 2009. Therefore, these reports are also insufficient to establish that appellant sustained an employment-related injury on October 14, 2008.

The medical reports of Dr. Lewis, Dr. Siuta, Dr. Watkins and Dr. Nargund do not provide a firm diagnosis or medical opinion addressing how appellant's low back condition was caused or aggravated by the October 14, 2008 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of

⁵ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

limited probative value on the issue of causal relationship.⁶ Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on October 14, 2008.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish that the October 14, 2008 employment incident was causally related to the back condition. Therefore, appellant failed to meet his burden of proof to establish a claim.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁶ *C.B.*, 61 ECAB ____ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).