

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

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**P.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**  
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**Docket No. 10-1315  
Issued: March 4, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 5, 2010 appellant filed a timely appeal from an October 27, 2009 decision of the Office of Workers' Compensation Programs' which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

**FACTUAL HISTORY**

On November 4, 2008 appellant, then a 42-year-old distribution clerk, filed an occupational disease claim alleging a back condition while at work. His duties included bending, twisting, lifting and standing for long periods on cement. Appellant also asserted that lifting affected his back. The employing establishment noted that he related that "this was just something he has dealt with off and on for years and it was flaring up again."

In an October 1, 2008 report, Dr. Randall J. Ceton, a Board-certified family practitioner, treated appellant for recurrent low back pain stemming from an L4-L5 disc protrusion. Appellant had increasing discomfort with low back pain, left-leg radiation and right buttock numbness over the prior two to three months, which was apparently worsened by standing for long periods while at work. A magnetic resonance imaging (MRI) scan showed disc protrusion at L3-L4 and L4-L5, which was slightly more complicated than an MRI scan taken several years earlier. Dr. Ceton noted that x-rays showed right L5 spondylolysis and that Dr. Damon T. Vu, a Board-certified anesthesiologist and pain specialist, found sensory deficit involving the left leg and scheduled an electromyography (EMG) to rule out spinal neuropathy. Appellant's disc protrusion and spondylolysis contributed to his pain but likely were not the only causes. Dr. Ceton advised that appellant was motivated to return to work. In an October 31, 2008 report, he advised that appellant had bilateral knee pain but did not know if it was related to appellant's work. Dr. Ceton opined that "certainly, standing persistently can cause work-related pain but it [i]s unclear to me." He termed an MRI scan as surprisingly normal and noted that appellant's neurosurgeon suspected that appellant might have a "lesion higher up in his spinal cord." Dr. Ceton stated that examination was consistent with neuropathy related to low back pain. He opined that "the exacerbation seems to be related in part to repetitive work in which he is standing on a concrete floor with repetitive lifting, pushing and pulling and shoving of material in front of him."

In an undated statement received November 18, 2008, appellant noted that his low back condition was caused by standing on cement for long periods, bending and twisting and extending his arm and sorting.

In a letter dated November 26, 2008, the Office requested additional factual and medical evidence from appellant and the employing establishment.

In a November 10, 2008 report, Dr. Vu diagnosed low back pain and peripheral neuropathy. In a December 1, 2008 report, he administered a bilateral sacroiliac joint injection.

In a December 12, 2008 report, Dr. Ceton reiterated that appellant had an L4-L5 disc protrusion several years prior with increasing symptoms of low back pain, left-leg radiation and right buttock numbness over the past four to five months. It worsened with work, especially when standing for long periods, bending and twisting with repetitive lifting. Dr. Ceton diagnosed a disc protrusion at both L3-L4 and L4-L5 along with right L5 spondylolysis. He opined that appellant was unable to stand or sit for prolonged periods for more than 20 minutes at a time due to his disc disease. Dr. Ceton noted that appellant was unable to repetitively bend, twist or lift for three to six months.

In a December 14, 2008 letter, appellant stated that the initial injury was caused by a box of fruit or a heavy package that he tried to lift from a hamper. He had to shovel the sidewalks as well as pick up parcels that weighed up to 150 pounds.

By decision dated February 13, 2009, the Office denied appellant's claim. It found that the medical evidence did not establish that his low back condition was related to the accepted work activities.<sup>1</sup>

In a February 16, 2009 treatment note, Dr. Ceton advised that appellant's back was doing significantly better until three days prior when he "injured it." He diagnosed recurrent low back pain and suspected a herniated disc although an MRI scan was not conclusive. Dr. Ceton noted that appellant wished to work on a trial basis and explained that "as long as he is getting better I have told him that he can go back" but if he had an exacerbation, "he must stop immediately."

On February 26, 2009 appellant repeated his belief that his duty contributed to his low back condition and noted that the claims of coworkers' had been accepted. He included several awards and letters of recognition for his work. Appellant submitted evidence previously of record.

In a July 1, 2009 report, Dr. Ceton repeated appellant's history and noted that in the past year, appellant experienced significantly increasing pain, worsened at work by long periods of standing, pushing and pulling. Appellant's symptoms fluctuated greatly and became significantly worse when he stood for long periods of time at work. Unfortunately, his job does not allow this to happen with restrictions." Dr. Ceton examined appellant and found left leg radiculopathy with straight leg raise, possibly related to neuropathy, which was not diagnosed by EMG. He recommended a repeat EMG. Dr. Ceton stated that, given the degenerative nature of the disease, appellant's recurrent pain was more likely than not contributed to by his work.

On August 1, 2009 appellant requested reconsideration. He described his history of injury and duties at work.

By letters dated August 20, 2009, the Office advised appellant, Dr. Ceton and the employing establishment that additional factual and medical evidence was needed.

In an August 27, 2009 report, Dr. Ceton reiterated that appellant had a long history of low back pain. Appellant's work at the employing establishment "required prolonged standing and repetitive pushing and pulling, I think that more likely than not it has contributed to this condition of increased herniated disc. This would be in conjunction with other factors including possible degree of inherited tendency towards back problems, as well as activities outside of the workplace." Dr. Ceton noted that appellant had not worked since August 2008 despite a work release because the employer would not accept appellant. He advised that the work restrictions were secondary to appellant's injuries and therefore more likely than not, related to appellant's work exposure. Dr. Ceton believed that a substantial amount of contribution came from other factors. On August 28, 2009 he completed a work capacity evaluation and advised that appellant could return to work for eight hours a day with restrictions on walking, standing twisting, bending and stooping.

By decision dated October 27, 2009, the Office denied modification of the February 13, 2009 decision.

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<sup>1</sup> On March 6, 2009 appellant requested a hearing but, in a letter dated May 12, 2009, he withdrew the request.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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.<sup>3</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>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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>5</sup>

## ANALYSIS

The Office accepted that appellant's work activities included bending, twisting, lifting and standing on cement at work. The Board finds that he submitted insufficient medical evidence to establish that his low back condition was caused or aggravated by these activities or other specific factors of his federal employment.

Dr. Ceton submitted two reports dated October 1, 2008. He diagnosed an L4-L5 disc protrusion based on an MRI scan which is not of record. Dr. Ceton noted that appellant had a history of increasing low back pain with left-leg radiation and right buttock numbness over the prior two to three months, which was apparently worsened by standing for long periods while at his work. The Board notes that appellant had not worked for the employing establishment since

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

August 7, 2008 and Dr. Ceton did not clearly address how work activities caused appellant's condition. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>6</sup> On October 1, 2008 Dr. Ceton noted appellant's increased pain over the past two to three months but stated that his MRI scan was "surprisingly normal." This is in contrast to the earlier report which found a disc protrusion. Dr. Ceton also opined that "the exacerbation seems to be related in part to repetitive work in which [appellant] is standing on a concrete floor with repetitive lifting, pushing and pulling and shoving of material in front of him." His opinion is not fully explained and he couched his opinion on causal relationship in speculative terms noting that appellant's condition was "apparently" work related or "seems to be related" without providing medical rationale to explain the reasons why any specific diagnosed condition was caused or aggravated by particular employment duties.<sup>7</sup> The Board has held that medical conclusions unsupported by adequate facts and rationale are of little probative value.<sup>8</sup>

In an October 31, 2008 report, Dr. Ceton advised that appellant had bilateral knee pain and opined that he did not know if it was related adding that "certainly, standing persistently can cause work-related pain but it [i]s unclear to me." At best this report provides speculative support for causal relationship. In a December 12, 2008 report, Dr. Ceton referred to an L4-L5 disc protrusion and MRI scan, which was not of record and advised that appellant's condition worsened with work, especially when standing for long periods, bending and twisting with repetitive lifting. Again, he did not provide a fully reasoned narrative opinion explaining how appellant's employment duties caused or aggravated the diagnosed condition. On July 1 and August 27, 2009 Dr. Ceton noted increased pain "worsened at work" by long periods of standing, pushing and pulling and opined that the degenerative condition was contributed to by appellant work. He did not provide any additional medical reasoning explaining the basis of his opinion on causal relationship. On February 16, 2009 Dr. Ceton noted that appellant's back was doing significantly better until three days earlier when he "injured it." This report suggests a new injury unrelated to work and would not be sufficient to establish a work-related condition.

The record also contains reports from Dr. Vu but they are insufficient to establish the claim as he did not offer any opinion on causal relationship.<sup>9</sup> Other reports submitted by appellant's physicians also failed to specifically address whether any factors of appellant's

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<sup>6</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>7</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>8</sup> *C.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-2268, issued May 22, 2009).

<sup>9</sup> Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. See *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009).

employment caused appellant's diagnosed condition. Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.<sup>10</sup>

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a diagnosed medical condition, he has not met his burden of proof in establishing his claim.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 27, 2009 is affirmed.

Issued: March 4, 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

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<sup>10</sup> Appellant also provided physical therapy records. Such records do not constitute competent medical opinion in support of causal relation as a physical therapist is not a physician as defined under the Act. A.C., 60 ECAB \_\_\_\_ (Docket No. 08-1453, issued November 18, 2008); see 5 U.S.C. § 8101(2).