

June 18, 2007. Dr. Marcus V. Duda, a Board-certified orthopedic surgeon, first examined her on June 22, 2007 and discussed her back pain at work on June 13 and 18, 2007. He reported that appellant had previously sought treatment for her back pain and diagnosed lumbar spondylosis. Dr. Duda recommended a magnetic resonance imaging (MRI) scan. An MRI scan dated July 17, 2007 demonstrated disc herniations at L4-5 and L5-S1. In reports dated July 20 and August 16, 2007, Dr. Duda diagnosed herniated disc and stated that appellant's preinjury MRI scan was negative, but that her postinjury MRI scan showed soft disc herniation at L4-5. OWCP accepted her claim for aggravation of lumbar spondylosis on August 21, 2007.

On August 21, 2007 Dr. Duda diagnosed a lumbar spine injury secondary to appellant's work-related injury with a focal soft disc herniation to the right at L4-5 with compression of the right L4 nerve root. On October 12, 2007 he examined her and observed lumbar spine pathology with lumbar spine spasms with symptoms with no focal organic etiology. Appellant underwent an epidural steroid injection on November 8, 2007 and her lumbar spine spasm resolved by December 27, 2007. In a note dated March 4, 2008, Dr. Duda reported that appellant had seated work restrictions due to her angioedema from an allergy at work. On examination, he found negative straight leg raising bilaterally, good motor strength, no spasm and normal gait. Dr. Duda stated, "[Appellant] is released from her spine standpoint without restrictions."

Dr. Duda completed a note dated July 28, 2008 and stated that appellant had experienced a recurrence of her lower back pain and spasm secondary to her June 2007 work injury. Appellant stopped work from August 8 through 27, 2008 due to lower back spasms. She filed a claim for compensation. Appellant stated that she was working light duty before her back injury due to a prior claim and that she had environmental allergies. OWCP authorized wage-loss compensation from August 2 through October 2008. Appellant's physician released her to return to light-duty work on October 13, 2008 with no lifting over 10 pounds. She underwent a second epidural injection on November 8, 2008. Dr. Duda released appellant to return to work on October 20, 2008 for four hours a day for one week and then to full duty with no restrictions. Appellant returned to fully duty on December 28, 2008.

Appellant underwent an MRI scan on February 28, 2009 which demonstrated a disc protrusion at L5-S1 impinging on the right S1 nerve root. Her MRI scan also showed a protrusion at L4-5 and facet arthropathy compressing the L4 nerve root. Appellant underwent an epidural steroid injection on March 9, 2009. Dr. Duda diagnosed a new herniated disc at L5-S1 on March 4, 2009.

Dr. Duda examined appellant on September 20, 2010 and diagnosed lumbar spine spasm with anxiety. Appellant had a lumbar spasm in his office on October 18, 2010. She underwent an MRI scan on October 23, 2010 which demonstrated right foraminal stenosis at L4-5 and L5-S1 due to degenerative disc disease. In a note dated October 27, 2010, Dr. Marc C. Yates, a Board-certified orthopedic surgeon, reported appellant's history of Coumadin usage as well as angioedema and allergies to dust mites and molds. He discussed options for her back surgery. On November 9, 2010 OWCP's medical adviser opined that the need for low back disc surgery was causally related to appellant's condition. OWCP authorized the surgery on November 16, 2010. Appellant declined to undergo surgery at that time.

On January 6, 2011 Dr. Yates stated that as appellant was utilizing Coumadin no lumbar surgery could be considered until she was completely off the medication with no evidence of residual deep vein thrombosis. Appellant had a normal electromyogram (EMG) on May 20, 2011. Dr. Yates examined her on May 27, 2011 and stated that she could return to work on June 1, 2011. Appellant returned to work on machines by June 7, 2011. On September 8, 2011 Dr. Yates stated that she could perform her regular work. He reported that appellant returned to work and had an allergic reaction to something at the job site resulting in a change in her job position. In a note dated October 25, 2011, Dr. Yates reported that her allergies had improved and that she was working as a human resource assistant.

Appellant underwent a lumbar MRI scan on October 30, 2011 which demonstrated a slight increase in the large right paracentral disc protrusion at L5-S1. Dr. Yates recommended that she undergo right L5-S1 microdiscectomy for the removal of the large herniation on November 15, 2011. On November 21, 2011 OWCP's medical adviser recommended additional development of the medical evidence and denied approval of the surgery.

On March 1, 2012 Dr. Yates reviewed appellant's history of injury and medical history. He reviewed the October 2011 MRI scan and again recommended microdiscectomy. Dr. Yates noted that appellant was no longer on Coumadin. He reported that she had significant flare-up of back pain on November 27, 2012 and was experiencing pain in her left leg. On March 28, 2013 Dr. Yates diagnosed back pain due to a large herniated disc at L5-S1.

Appellant filed a claim for compensation on April 2, 2013 requesting compensation for leave without pay from March 11 through 29, 2013. In a letter dated April 10, 2013, OWCP requested medical evidence supporting her disability for work. Appellant notified it on April 11, 2013 that the employing establishment was only able to provide five hours of work a day. In a note dated April 26, 2013, Dr. Michael J. Hilts, a Board-certified orthopedic surgeon, found that she had pain with straight-leg raising on the right and diagnosed "flare-up low back pain with L5-S1 disc herniation."

Appellant filed additional claims for compensation on May 6 and 20, 2013 requesting compensation for leave without pay from April 29 through May 17, 2013. OWCP requested additional medical evidence within 30 days on May 7, 2013. On April 29, 2013 Dr. Hilts stated that appellant was out of work until she could be seen by her surgeon on May 28, 2013.

In a note dated October 25, 2011, Dr. Yates stated that appellant had changed positions and was working in human resources. He reviewed her MRI scan findings of the herniated disc and noted that electrodiagnostic testing did not reveal significant nerve damage.

Dr. Hilts submitted a note dated April 26, 2013 stating that appellant had a recent flare-up of back pain. On May 9, 2013 Dr. Yates stated that she continued to work until she experienced severe back pain, spasms, leg weakness and numbness and sought treatment from Dr. Hilts. He found positive straight leg raising on physical examination. Appellant had difficulty walking on her heels due to radicular leg pain. He recommended an additional MRI scan and stated that she was totally disabled until the end of the month. An MRI scan dated May 11, 2013 demonstrated a stable right lateral disc herniation at L4-5 and a decreased right paracentral disc protrusion at L5-S1. On May 22, 2013 Dr. Yates stated that appellant was experiencing increased symptoms

from a large ruptured disc due to her October 20, 2008 employment injury. He stated that she could not work from April 29 to May 28, 2013 due to increased nerve root symptoms from the ruptured disc pressure on her spinal nerve. On May 23, 2013 Dr. Yates completed a duty status report and stated that appellant was out of work pending surgery. In a treatment note dated May 23, 2013, he stated that she was out of work due to increasing symptoms of back pain, right leg pain and some left leg symptoms. Dr. Yates noted that appellant had positive popliteal compression test on the right positive straight leg raising at 70 degrees on the right and back and leg pain when attempting to walk on her heels due to radicular symptoms on the right. He examined her on June 7, 2011 and stated that she was working on machines again on her feet for a normal eight-hour shift. Dr. Yates found that appellant's physical examination was normal.

In a decision dated June 3, 2013, OWCP denied appellant's claim for compensation from March 23 to 29, 2013.

Appellant telephoned OWCP on June 10, 2013 and stated that she also had an asthma claim. She requested a hearing on June 25, 2013 before an OWCP hearing representative.

Appellant filed an additional claim for compensation for the period April 29 through May 31, 2013. In a letter dated June 10, 2013, OWCP stated that it would consider her claims from April 29 to May 31, 2013 together. Appellant submitted additional claims for compensation.

Dr. Yates examined appellant on March 28, 2013 due to low back pain and noted that she had changed jobs at work. He stated that she had ongoing allergy issues. Appellant reported that she was no longer able to sit intermittently at work and was constantly standing. Dr. Yates diagnosed back pain with large herniated disc at L5-S1. He noted that appellant had no neurologic deficit. In a report dated June 24, 2013, Dr. Yates noted her history of injury in 2007 and her findings on an MRI scan. He noted appellant's recommended surgery had previously been delayed due to medication. Dr. Yates again recommended back surgery.

OWCP issued a decision on July 2, 2013 finding appellant had not submitted sufficient medical opinion evidence to establish a recurrence of disability due to her June 18, 2007 employment injury commencing May 6, 2013. Appellant requested an oral hearing on July 11, 2013.

An MRI scan dated September 4, 2013 demonstrated chronic L4-5 and L5-S1 disc degeneration and disc herniations and stable mild L4-5 spinal stenosis. Dr. Yates reported that appellant was experiencing right leg numbness on September 25, 2013.

Appellant testified at the oral hearing on November 21, 2013. She stated that her work duties changed from 2008 to 2013. Following acceptance of her claim, appellant was in a seated position with the ability to change positions making end sale placards lifting no more than 10 pounds. Her last offered position in March 2013 was as a window clerk, which required standing constantly, lifting trays of mail and casing mail. Appellant worked in this position from March 18 through 26, 2013. She testified that her limited-duty position was based on her back injury and a separate claim for allergies. Appellant stated that she lifted over 10 pounds while working as a window clerk approximately twice a day. She stood for approximately eight hours

a day excepting her lunch. Appellant testified that she was also required to stoop and bend as a window clerk. She asserted that while performing this position her back became stiffer resulting in spasms due to the constant standing. Counsel argued that OWCP failed to adequately address the issue of medical treatment, specifically surgery for appellant's herniated disc and to expand her accepted conditions to include the herniated disc. He also asked that appellant's claims be combined.

By decision dated January 13, 2014, OWCP's hearing representative noted that appellant stopped work on March 27, 2013. He found that she had not established a change in her light-duty job requirements or a worsening of her injury-related condition resulting in disability for work beginning March 23, 2013. The hearing representative further found that appellant had not established that her diagnosed disc herniations were due to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, 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.³ 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.⁴

OWCP defines 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."⁵ 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. First the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

² *Id.* at §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁹

ANALYSIS -- ISSUE 1

Appellant filed a claim for a traumatic back injury on June 18, 2007 due to lifting and moving mail in the performance of duty. OWCP accepted her claim for an aggravation of lumbar spondylosis on August 21, 2007. Appellant returned to fully duty on December 28, 2008.

Appellant's attending physician, Dr. Duda diagnosed a disc herniation on July 20, 2007 based on an MRI scan. On August 16, 2007 he stated that appellant's preinjury MRI scan was negative, but that her postinjury MRI scan showed soft disc herniation at L4-5. In his July and August 2007 reports, Dr. Duda generally related that she had a lumbar spine injury secondary to a work-related injury with a disc herniation at L4-5. He provided a diagnosis and an opinion that appellant's herniated disc was due to her employment. Dr. Duda's reports are not sufficient to meet her burden of proof to establish that her herniated disc was due to her accepted injury. He did not adequately explain how or why the accepted employment incident resulted in the herniated disc. The record does not contain the preemployment injury MRI scan and Dr. Duda did not specify the date of such report. The Board has held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.¹⁰ Dr. Duda did not provide a detailed, well-reasoned medical opinion explaining the relationship between appellant's accepted employment injury of June 18, 2007 and her herniated disc. His reports are not sufficient to meet her burden of proof.

On May 22, 2013 Dr. Yates stated that appellant was experiencing increased symptoms from a large ruptured disc due to an October 20, 2008 employment injury. He did not provide an accurate history of injury or adequately discuss how the herniated disc resulted from the accepted employment injury in 2007 or the accepted condition of aggravation of lumbar spondylosis. Without further medical reasoning explaining causal relationship Dr. Yates' report is not sufficient to meet appellant's burden of proof.

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Kathryn Haggerty*, *supra* note 3.

The remainder of the medical evidence did not discuss a possible causal relationship between appellant's accepted employment incident or injury and her diagnosed condition of herniated disc and therefore cannot meet appellant's burden of proof. The Board finds that she has not submitted sufficient medical opinion evidence to establish that an additional condition resulted from her accepted employment incident or injury. Without a detailed medical report based on a proper history of injury and providing findings explaining how and why appellant's lifting at work resulted in her diagnosed herniated disc, she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹² The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.¹³

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹⁴ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁵ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁶

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, *supra* note 3; *Elaine Pendleton*, *supra* note 3.

¹³ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

¹⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *Id.*

¹⁶ *Id.*

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁷ Rationalized medical evidence is medical evidence which includes a physician's detailed 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.¹⁸ Neither the 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.¹⁹

ANALYSIS -- ISSUE 2

Following her accepted employment injury, appellant returned to full duty on December 28, 2008. She filed a series of claims for compensation alleging periods of total disability due to her accepted employment injury of aggravation of lumbar spondylosis. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed disability and the accepted condition.²⁰ The Board finds that she did not submit sufficient medical evidence to establish employment-related disability for the periods claimed due to her accepted injuries.

In support of periods of total disability, appellant submitted reports from Drs. Yates and Hilts. On April 26, 2013 Dr. Hilts noted her complaint of increased back pain. He did not provide an opinion on the causal relationship between appellant's current condition and her accepted employment injury. Without a clear relationship between appellant's accepted employment injury and her current disability, this report is not sufficient to meet her burden of proof.

Dr. Yates noted that appellant stopped work due to her increased back pain, but failed to provide an opinion on whether her total disability was due to her accepted employment injury rather than her subsequently diagnosed herniated discs. In a note dated May 22, 2013, he stated that she was experiencing increased symptoms from a large ruptured disc due to her October 20, 2008 employment injury. The Board notes that appellant's traumatic employment injury was on June 18, 2007. The record on appeal does not support a second employment injury. Therefore this report is not based on an accurate factual background. In the remainder of his treatment notes, Dr. Yates did not address the casual relationship between appellant's current periods of disability and her accepted employment injury. Without an opinion that appellant's accepted condition of aggravation of lumbar spondylosis result in her alleged periods of disability she has failed to meet her burden of proof. Dr. Yates' notes are not sufficiently

¹⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

²⁰ *C.G.*, Docket No. 13-1172 (issued May 20, 2014).

detailed and well reasoned to support her claim for total disability due to her accepted employment injury.

Dr. Yates examined appellant on March 28, 2013 due to low back pain and noted that she had changed jobs at work and that she had ongoing allergy issues. At the oral hearing, appellant alleged a change in her light-duty job requirements in March 2013 in that she was no longer able to sit intermittently at work and was constantly standing. She also alleged that she was required to lift more than 10 pounds. Appellant testified that her last position in March 2013 was as a window clerk which required standing constantly, lifting trays of mail and casing mail and lifting more than 10 pounds. She worked in this position from March 18 through 26, 2013. Appellant testified that her previous limited-duty position was awarded due to both her back injury and a separate claim for allergies. If she was working limited-duty due to her accepted employment injury, a change in those duties could result in a recurrence of disability.²¹ The Board finds that the record does not establish that appellant was performing light-duty work due to restrictions as a result of her accepted back injury. Appellant returned to full-duty work in December 2008 and has not received work restrictions due to her accepted employment injury of aggravation of lumbar spondylosis since her return to work. There is no evidence that the employing establishment has provided her with light-duty work due to her accepted back injury since this date. As appellant's light-duty work was not related to her accepted employment injury a change in her light-duty work requirements does not entitle her to compensation for total disability.

The Board finds that appellant has not submitted sufficient factual and medical evidence to establish that she sustained a period of total disability due to her accepted aggravation of lumbar spondylosis. Therefore appellant has not established that she is entitled to compensation benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a herniated disc due to her accepted employment injury. The Board further finds that she has not established a period of disability on or after March 2013 due to her accepted aggravation of lumbar spondylosis.

²¹ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements. *Terry R. Hedman*, 38 ECAB 222 (1986).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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