United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 07-1144**
	)	**Issued: October 23, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Iowa City, IA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2007 appellant filed a timely appeal from a July 13, 2006 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on September 5, 1997.

FACTUAL HISTORY

This is the second time this case has been before the Board. By decision dated June 9, 2006, the Board set aside the Office's December 21, 2005 decision denying appellant's request for reconsideration on the grounds that it was untimely filed and failed to show clear evidence of

error. Finding that her request was timely, the Board remanded the case to the Office for review under the proper standard.[1]

On September 18, 1997 appellant, then a 48-year-old physical therapist, filed a claim alleging that she sustained an injury to her lower back on September 5, 1997, while assisting in a transfer of an obese patient from a wheelchair to a mat. She stated that she felt pain and tightness in her back, radiating into the right lower extremity. Appellant also felt numbness in her toes.

Appellant submitted a September 16, 1997 report from Dr. Jane Engeldinger, a Board-certified obstetrician and gynecologist, who related her complaint of constant back pain, which had allegedly increased during the weeks prior to the visit. She submitted a November 11, 1997 report of a magnetic resonance imaging (MRI) scan of the lumbar spine and reports dated November 19 and 21, 1997 from Dr. Patrick W. Hitchon, a Board-certified neurological surgeon. On November 19, 1997 Dr. Hitchon described a history of low back pain radiating into the right lower extremity. He indicated that appellant had numbness in the dorsum of the right foot and internal aspect of the leg. Dr. Hitchon noted that appellant's work activities, which included lifting heavy patients, were repetitive in nature and taxing on the lumbar spine. His examination revealed no motor weakness; minimal discomfort upon coughing, sneezing or percussion of the lumbar spine; and diminished sensory perception in the L5 area on the right side. Straight leg raises were possible to 90 degrees bilaterally. Dr. Hitchon opined that appellant might have L5 radiculopathy resulting from a spondylotic spur or an L4-5 disc herniation, most likely due to age. On November 21, 1997 Dr. Hitchon noted that the November 11, 1997 MRI scan showed evidence of a minimal disc bulge at L5-S1, without compression of a nerve root. He found no evidence of a frank disc herniation, lumbar stenosis, fracture, dislocation or slippage.[2]

By letter dated July 20, 1998, the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit additional information, including treatment notes and a report from a physician containing an opinion, supported by medical evidence, explaining how the reported work incident caused the claimed injury.

Appellant submitted a report dated July 30, 1998 from Dr. George R. Bergus, Board-certified in family and geriatric medicine, who treated her for acute neck strain. Dr. Bergus noted a decreased range of motion and tenderness on examination. The record contains a July 31, 1998 report of an MRI scan of the cervical spine.

By decision dated August 20, 1998, the Office denied appellant's claim finding that the medical evidence submitted was insufficient to establish a causal relationship between appellant's claimed medical condition and the reported incident of September 5, 1997.

[1] Docket No. 06-707 (issued June 9, 2006).

[2] The Board notes that, on December 22, 1997, appellant filed a new traumatic injury claim alleging that she injured her right arm and hip when she tripped and fell while tending to a patient. No medical evidence was submitted in support of this claim, and it was not assigned a separate case number or developed by the Office.

In a letter dated September 9, 1998, appellant requested reconsideration and a second opinion examination in order to clarify the issue of causal relationship. In a decision dated September 11, 1998, the Office denied merit review of its August 20, 1998 decision.

On November 16, 1998 appellant requested reconsideration. She submitted an October 2, 1998 report from Dr. Wayne Janda, a Board-certified orthopedic surgeon, who diagnosed L5 lumbar radiculopathy on the right, "probably secondary to disc herniation at L4-5." On examination, Dr. Janda found restricted range of motion in the neck: forward flexion was 45 degrees; lateral rotation was 45 degrees; side bending was 15 degrees. Lumbar posture was lordotic. Back motions were painful in extension. Dr. Janda noted some muscle spasm and tightness on the right in the lumbar region with forward bending. There was decreased sensation in the lateral aspect of the right foot, especially the fourth and fifth toes; marked weakness in the right hamstring; atrophy in the right calf; and some weakness on dorsiflexors of the right foot. Appellant also submitted therapy notes for the period October 9, 1998 through January 27, 1999.

By decision dated February 12, 1999, the Office again denied modification of its previous decision. Accepting that the September 5, 1997 incident occurred, it found that the evidence failed to establish a causal relationship between the incident and appellant's claimed condition.

On August 2, 1999 appellant again requested reconsideration. In support of her request, appellant submitted a report of a December 9, 1998 MRI scan of the cervical spine which revealed diffuse cervical disc degeneration, most pronounced at C5-6; relatively severe central canal stenosis at C5-6 from chronic disc degeneration; and moderately severe central canal stenosis at C4-5 from a diffuse annular bulge. Appellant provided reports dated July 15 and 22 and August 2, 1999 from Dr. Richard F. Neiman, a Board-certified neurologist. On July 15, 1999 Dr. Neiman related the history of injury as reported by appellant, indicating that on September 5, 1997 she developed pain in her lower back and right leg while lifting a 300-pound person from a wheelchair to a mat. He stated that she "went through a few months pain, trying to do self-treatment." Examination revealed limitation in range of motion of the lumbosacral spine, with flexion forward at 60 degrees, extension backward at 20 degrees, right and left lateral flexion at 35 degrees. Straight leg raises were negative. Noting that appellant had experienced repetitive trauma, Dr. Neiman opined that the September 5, 1997 incident was the cause of her current condition. On July 22, 1999 Dr. Neiman reported that appellant's MRI scan showed evidence of disc degeneration at the L4-5 and L5-S1 levels and a slight bulge at both levels. There was no evidence of significant encroachment on the thecal sac or neural foramen. Dr. Neiman opined that appellant had a "permanency related to repetitive work as a physical therapist. On August 2, 1999 he opined that the employing establishment was the principle cause of appellant's degenerative disc at L4-5 and L5-S1.

Appellant submitted treatment notes from Dr. Janda for the period October 27, 1998 through July 12, 1999. On October 27, 1998 Dr. Janda diagnosed lumbar radiculopathy on the right, probably secondary to disc herniation at L4-5. He stated that x-rays and MRI scans revealed spondylosis at C5-6, with intervertebral disc space narrowing and spurring. A November 17, 1997 MRI scan of the lumbar spine showed disc degeneration at L4-5 and a small disc bulge at L4-5 and L5-S1. On December 8, 1998 Dr. Janda diagnosed lumbar radicular syndrome and cervical spondylosis. On December 17, 1998 he reported that a December 7, 1998 MRI scan of the cervical spine revealed degenerative disc at C5-6 and C4-5, with moderately

severe central canal stenosis. Based on the MRI scan, Dr. Janda diagnosed cervical spondylosis, with cervical spinal stenosis, primarily at C5-6 and to a lesser degree at C4-5. In notes from a follow-up visit on July 12, 1999, he reiterated his diagnoses of lumbar radiculopathy at L5 on the right and cervical spondylosis.

By decision dated August 31, 1999, the Office denied modification of its previous decision finding that appellant had failed to establish a causal relationship between the September 5, 1997 incident and her claimed back condition. On November 22, 1999 appellant requested reconsideration.

Appellant submitted a September 24, 1999 report from Dr. Neiman who opined that appellant's degenerative arthritis was caused by the September 5, 1997 work incident and repetitive trauma to her back in her job as a physical therapist. Dr. Neiman stated that degenerative arthritis can be age related, but that given appellant's history of heavy lifting and the incident which occurred on September 5, 1997 the degree of impairment and restrictions previously stated would be appropriate. On October 12, 1999 he opined that appellant's impairment was due to a history of repetitive lifting and the incident which occurred on September 5, 1997 while she was lifting a patient at work. Appellant submitted physical therapy notes dated December 22, 1999 which reflected a history of neck and back pain for several years.

By decision dated December 2, 1999, the Office denied modification of its August 29, 1998 decision. It informed appellant that, in order for her claim to be accepted, Dr. Neiman would need to provide a report that contained a history of the specific incident of September 5, 1997, a diagnosed condition and a statement, with supporting rationale, that lifting an obese patient on that date caused or aggravated the degeneration of disc at L4-5 and L5-S1.

On June 7, 2000 appellant again requested reconsideration. In a report dated May 10, 2000, Dr. Neiman reiterated his opinion that appellant's continued back pain was work related. He stated, "I have no question that the injury described which occurred on or about September 5, 1997 can easily be the responsible cause." On May 26, 2000 Dr. Neiman stated his belief that the September 5, 1997 incident was the "main cause of the disc herniation with [appellant's] small right paracentral disc protrusion and protrusion at L5-S1." On August 2, 2000 he repeated his belief that appellant's herniated disc was due to the "traumatic event" at work. In an undated statement, appellant indicated that her job duties entailed lifting heavy patients repeatedly, but that the lifting incident on September 5, 1997 was the definite pivotal event that caused her back condition. She stated that she waited until November 1997 to seek medical treatment, because she believed her back would improve on its own.

By decision dated September 7, 2000, the Office denied modification of its previous decision stating that, "although new medical evidence confirms a specific incident as responsible for the low back condition it does not specifically identify the organic change [] which materially altered the underlying degenerative condition."

On September 5, 2001 appellant again requested reconsideration. In support of her request, appellant submitted a September 5, 2001 report from Dr. Neiman who opined "to a reasonable degree of medical certainty that the work at the [employing establishment] was the cause of [appellant's] injury." Dr. Neiman stated his belief that appellant's job and medical

histories supported his opinion that her disc herniation occurred as a result of repetitive work at the employing establishment, "with the final event being the September 5, 1997 injury causing the disc herniation." By decision dated January 17, 2002, the Office again denied modification of its previous decisions.[3]

On January 13, 2003 appellant requested reconsideration of the January 17, 2002 decision. Appellant submitted notes dated October 9, 2002 from Dr. Sergio A. Mendoza, a treating physician, who stated that, in 1997, appellant developed an acute onset of low back pain radiating into her right leg while lifting a patient at work. Dr. Mendoza stated that an MRI scan revealed degenerative disc disease.

Appellant submitted notes and reports from Dr. Neiman for the period October 3, 2000 through January 3, 2003. In a letter dated November 21, 2001, Dr. Neiman expressed his frustration with the Office's denial of appellant's claim, stating that he felt strongly that "the repetitive trauma with the accumulation of [the] acute episode was the cause of the disc herniation." In notes dated November 27, 2001, he indicated that appellant still had degenerative changes at the L5-S1 levels, which he believed were due to repetitive trauma. On May 15, 2002 Dr. Neiman stated that there was no question that her degenerative changes were aggravated by her work conditions. On November 18, 2002 he reviewed appellant's medical records from September 16, 1996 through the date of his report, including x-rays, MRI scans and physician's reports. On December 20, 2002 Dr. Neiman stated that symptoms of appellant's degenerative disc disease were aggravated by repetitive lifting at work.

In a narrative report dated January 3, 2003, Dr. Neiman indicated that he had reviewed appellant's medical records from October 17, 1988 through 2002. He related the history of the reported injury, stating that on September 5, 1997 appellant felt pain and tightness in her lower back, radiating into the right lower extremity while lifting a 300-pound patient from a wheelchair to a mat with the assistance of one other person. Dr. Neiman noted that a November 11, 1997 MRI scan revealed a disc protrusion at the L5-S1 level and minimal disc bulge at L4-5, which he opined was caused by the September 5, 1997 traumatic injury. He stated: "It is my opinion, within a reasonable degree of medical certainty, that lifting at work, particularly the incident occurring on September 5, 1997, aggravated a preexisting degenerative change and was the direct cause of the disc protrusion at the L5-S1 level with subsequent right leg radiculopathy. It is my opinion that the permanency and limitations which are stated in my records and report to Attorney Mark Moen, are due to the disc injury which was caused by lifting at work on or about September 5, 1997." Dr. Neiman indicated that repetitive trauma had been an aggravating factor.

By decision dated March 6, 2003, the Office denied modification of its previous decisions, finding that appellant had failed to establish a causal relationship between the September 5, 1997 incident and her diagnosed condition.

On March 4, 2004 appellant again requested reconsideration. In a November 4, 2003 report, Dr. Neiman provided diagnoses of lumbar disc disease at L4-5 and L5-S1 and moderate

[3] On May 13, 2002 appellant filed a separate traumatic injury claim (File No. 112009794), alleging that she injured her back on May 11, 2002 while transferring a patient from a wheelchair to a standing position. The claim was accepted for aggravation of lumbosacral degenerative joint disease.

facet arthropathy L3-4 and L4-5 bilaterally. Examination revealed forward flexion of the L5 spine at 60 degrees; backward extension at 30 degrees; and extension right and left at 25 degrees. Straight leg tests were negative bilaterally. On February 5, 2004 Dr. Hitchon stated that he had reviewed appellant's November 19, 1997 hospital records, as well as her September 17, 1997 traumatic injury report reflecting that she had experienced pain in her lower back and right leg while transferring a patient from a wheelchair to a mat during physical therapy. He opined that, based upon the records reviewed, appellant's symptoms at the time of his initial examination were related to the episode of September 5, 1997.[4] On June 1, 2004 the Office denied modification on the grounds that appellant had failed to establish a causal relationship between her diagnosed condition and the September 5, 1997 work injury.

On May 31, 2005 appellant requested reconsideration of the Office's June 1, 2004 decision. In a report dated May 24, 2005, Dr. Neiman reviewed appellant's medical records and history of injury. He noted that her November 17, 1997 MRI scan revealed an L4-5 disc bulge and significant stenosis, as well as a small focal disc protrusion. Dr. Neiman opined that the disc protrusion was caused by the September 1997 lifting accident. Noting that appellant possibly had some preexisting lower back problems, he stated that "the main responsible cause would be the lifting incident of September [5], 1997."[5]

By decision dated December 21, 2005, the Office denied appellant's request for reconsideration, finding that it was untimely filed and did not establish clear evidence of error. In a decision dated June 9, 2006, the Board found that the request was timely and remanded the case to the Office for review under the proper standard.[6]

By decision dated July 13, 2006, the Office denied modification of its June 1, 2004 decision on the grounds that the medical evidence failed to establish a causal relationship between the September 5, 1997 incident and appellant's diagnosed condition.

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.[7] 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."[8]

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[4] The Board notes that Dr. Hitchon referred to September 17, 1997 as the date of injury, which was the date appellant filed the traumatic injury claim.

[5] The Board notes that Dr. Neiman referred to September 17, 1997 as the date of injury, which was the date appellant filed the traumatic injury claim.

[6] Docket No. 06-707 (issued June 9, 2006).

[7] 5 U.S.C. § 8102(a).

[8] 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).

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.[9] 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.[10]

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.[11] An award of compensation may not be based on appellant's belief of causal relationship.[12] 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.[13] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[14]

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.[15]

[9] *Robert Broome*, 55 ECAB 339 (2004).

[10] *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).

[11] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[12] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[14] 20 C.F.R. § 10.303(a).

[15] *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

The Board finds that this case is not in posture for decision regarding 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. 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 the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background establishing causal relationship.[16] 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.[17]

The Office accepted that the September 5, 1997 lifting incident occurred as alleged, but found that there was no medical evidence that provided a diagnosis that could be connected to that injury. The Board finds, however, that the medical evidence of record supports that appellant sustained a work-related injury on September 5, 1997.

Dr. Neiman consistently opined that the September 5, 1997 lifting incident was the proximate cause of appellant's herniated disc condition. On July 15, 1999 he related the history of injury as reported by appellant, indicating that on September 5, 1997 she developed pain in her lower back and right leg while lifting a 300-pound person from a wheelchair to a mat. Dr. Neiman stated that appellant "went through a few months pain, trying to do self-treatment." Examination revealed limitation in range of motion of the lumbosacral spine with forward flexion at 60 degrees, backward extension at 20 degrees, right and left lateral flexion at 35 degrees. Straight leg raises were negative. Noting that appellant had experienced repetitive trauma, Dr. Neiman opined that the September 5, 1997 incident was the cause of appellant's current condition. On July 22, 1999 he reported that appellant's MRI scan showed evidence of disc degeneration at the L4-5 and L5-S1 levels and a slight bulge at both levels. There was no evidence of significant encroachment on the thecal sac or neural foramen. On September 24 and October 12, 1999 Dr. Neiman opined that appellant's degenerative arthritis was caused by the September 5, 1997 work incident and repetitive trauma to her back in her job as a physical therapist. On May 26, 2000 Dr. Neiman expressed his belief that the September 5, 1997 incident was the "main cause of the disc herniation with [appellant's] small right paracentral disc protrusion and protrusion at L5-S1" and on August 2, 2000 he repeated his belief that appellant's herniated disc was due to the "traumatic event" at work. On September 5, 2001 Dr. Neiman opined to a reasonable degree of medical certainty that appellant's disc herniation "occurred as a result of repetitive work at the employing establishment, with the final event being the September 5, 1997 injury causing the disc herniation." In his January 3, 2003 narrative, he

[16] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[17] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note16; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

related the history of the reported injury and reviewed the medical evidence. Dr. Neiman noted that a November 11, 1997 MRI scan revealed a disc protrusion at the L5-S1 level and minimal disc bulge at L4-4, which he opined was caused by the September 5, 1997 traumatic injury. He stated: "It is my opinion, within a reasonable degree of medical certainty, that lifting at work, particularly the incident occurring on September 5, 1997, aggravated a preexisting degenerative change and was the direct cause of the disc protrusion at the L5-S1 level with subsequent right leg radiculopathy." On May 24, 2005 Dr. Neiman reiterated that appellant's L4-5 disc bulge, significant stenosis and small focal disc protrusion was caused by the September 1997 lifting accident. Noting that appellant possibly had some preexisting lower back problems, he stated that "the main responsible cause would be the lifting incident of September [5], 1997."

The remaining medical evidence of record also supports appellant's claim. On November 19, 1997 Dr. Hitchon noted that appellant was experiencing low back pain radiating into the right lower extremity, with numbness in the dorsum of the right foot and internal aspect of the leg. On November 21, 1997 he stated that a November 11, 1997 MRI scan showed evidence of a minimal disc bulge at L5-S1, without compression of a nerve root. On February 5, 2004 Dr. Hitchon noted that appellant's November 19, 1997 hospital records, as well as her September 17, 1997 traumatic injury report reflected that she had experienced pain in her lower back and right leg while transferring a patient from a wheelchair to a mat during physical therapy. He opined that, based upon the records reviewed, appellant's symptoms at the time of his initial examination were related to the episode of September 5, 1997.

On October 2, 1998 Dr. Janda diagnosed L5 lumbar radiculopathy on the right, probably secondary to dis herniation at L4-5. He noted that a November 17, 1997 MRI scan of the lumbar spine showed disc degeneration at L4-5 and a small disc bulge at L4-5 and L5-S1. On December 8, 1998 Dr. Janda diagnosed lumbar radicular syndrome and cervical spondylosis. On December 17, 1998 he reported that a December 7, 1998 MRI scan of the cervical spine revealed degenerative disc at C5-6 and C4-5, with moderately severe central canal stenosis. Based on the MRI scan, Dr. Janda diagnosed cervical spondylosis, with cervical spinal stenosis, primarily at C5-6 and to a lesser degree at C4-5. On July 12, 1999 he reiterated his diagnoses of lumbar radiculopathy at L5 on the right and cervical spondylosis. While his reports do not contain a definitive opinion as to the cause of appellant's condition, Dr. Janda's reports confirm that appellant continued to be treated for her lumbar radicular condition, which reportedly began on September 5, 1997.

On January 13, 2003 Dr. Mendoza stated that in 1997 appellant developed an acute onset of low back pain radiating into her right leg while lifting a patient at work and noted that her MRI scan revealed degenerative disc disease. His report does not provide a definitive diagnosis or an opinion as to the cause of appellant's condition. However, it is factually consistent with appellant's treatment for her employment-related injury.

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 disc herniation and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed condition and the

accepted employment injury and are sufficient to require the Office to further develop the medical evidence and the case record.[18] On remand the Office shall obtain a rationalized opinion from a qualified 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 appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: October 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[18] *See Virginia Richard, supra* note 16; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).