



The Office requested additional factual and medical information by letter dated January 15, 2003. Appellant submitted several form reports from his attending physician, Dr. Gale A. Hazen, a Board-certified neurosurgeon, who offered contradictory opinions regarding the causal relationship between appellant's herniated disc at L5-S1 and his employment duties.

By decision dated February 28, 2003, the Office denied appellant's claim finding that the medical evidence did not establish a causal relationship between appellant's diagnosed condition and his federal employment. Appellant requested reconsideration of this decision on March 24, 2003 and stated additional evidence would be forthcoming. By decision dated April 10, 2003, the Office declined to reopen appellant's claim for consideration of the merits.<sup>1</sup>

Appellant, through his attorney, requested reconsideration on October 26, 2003 and submitted additional evidence from Dr. Hazen. By decision dated January 26, 2004, the Office denied modification of the February 28, 2003 decision noting that Dr. Hazen again provided contradictory statements regarding the causal relationship between appellant's diagnosed condition and his employment.<sup>2</sup>

### **LEGAL PRECEDENT**

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>3</sup>

### **ANALYSIS**

Appellant has submitted medical evidence from Dr. Hazen diagnosing a herniated disc at L5-S1 as well as L5-S1 spondylolysis and spondylolisthesis. He attributed his diagnosed condition to bending, twisting, lifting, walking and standing in the performance of his federal job duties. However, appellant has not submitted medical evidence establishing a causal relationship between his federal employment and his diagnosed condition.

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<sup>1</sup> As the Office subsequently reviewed appellant's claim on the merits in the January 26, 2004 decision, the Board will not address the nonmerit decision on appeal.

<sup>2</sup> Appellant requested a schedule award on October 16, 2003. As the Office did not issue a final decision on this issue, the Board will not address this claim for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

In his initial form report dated November 14, 2002, Dr. Hazen provided a diagnosis of left L5-S1 extruded disc, listed appellant's history of injury as delivering mail on May 10, 2002 and indicated with a checkmark "yes" that appellant's condition was due to this history. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>4</sup> As this form report did not contain any explanation for the conclusion reached, it is not sufficient to meet appellant's burden of proof in establishing a causal relationship between his condition and his employment duties. Furthermore, in form reports dated November 27, 2002 and January 20, 2003, Dr. Hazen checked "no" indicating that he did not believe that appellant's condition was caused or aggravated by employment activity.

In a narrative report dated September 30, 2003, Dr. Hazen diagnosed left L5-S1 herniated disc, L5-S1 spondylolysis, spondylolisthesis. He stated, "This is work aggravated and work related. His congenital defect in the joint, of course, he had before he started working." While this report offers an opinion on the causal relationship between appellant's herniated disc and his federal employment, Dr. Hazen did not describe the employment duties which he felt contributed to appellant's diagnosed condition and did not provide any medical reason explaining how and why he reached the conclusion that the specific job duties caused or contributed to appellant's condition. Therefore this report is not sufficient to meet appellant's burden of proof.

In a form report dated October 23, 2003, Dr. Hazen again provided a diagnosis, but indicated with a checkmark "no" that appellant's condition was not caused nor aggravated by employment activities. As Dr. Hazen has offered contradictory opinions regarding the causal relationship between appellant's condition and his employment and as he has not offered any explanation for the various conclusions reached, his reports are not sufficient to meet appellant's burden of proof in establishing that he developed a herniated disc due to factors of his federal employment and the Office properly denied his claim.

### **CONCLUSION**

The Board finds that the medical evidence of record does not establish a causal relationship between appellant's diagnosed condition and his federal employment and that therefore appellant failed to meet his burden of proof in establishing that he developed a herniated disc due to his job duties.

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<sup>4</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2004 and February 28, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 25, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member