

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

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**J.C., Appellant**

**and**

**U.S. POSTAL SERVICE, MOTOR VEHICLE  
SERVICE, Cleveland, OH, Employer**

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**Docket No. 08-494  
Issued: July 9, 2008**

*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, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 3, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 25 and November 15, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that he sustained a lower back injury in the performance of duty.

**FACTUAL HISTORY**

Appellant, a 55-year-old custodian, filed a traumatic injury claim on March 8, 2007, alleging that he injured his lower back when he slipped on a wet floor on February 6, 2007.

Appellant submitted a February 10, 2007 disability slip from Dr. Brian Hassinger, a chiropractor, who stated that he was placing him on disability from February 10 to March 3, 2007 for a work-related injury. In a March 13, 2007 form report, Dr. Hassinger diagnosed subluxation at L5-S1 and imposed work restrictions.

On March 22, 2007 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms, the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In an April 3, 2007 report, Dr. Molly Friedman, a specialist in family practice, stated:

“[Appellant] tripped at work, without falling on February 6, 2007 and felt excruciating pain on the left lower side of his back. He did not report this initially to [his] supervisor as he thought his condition would resolve with rest. [Appellant] came to my office with the complaints of lower back pain radiating into the leg and foot with some residual leg weakness on February 12, 2007. We scheduled a magnetic resonance imaging [MRI] scan of the lumbar spine on February 22, [2007] which demonstrated moderate disc degeneration and multiple herniated discs impinging upon nerve root. [Appellant] was given extensive home exercises and anti-inflammatories, steroids [and] muscle relaxers. [He] was very compliant, but his condition did not improve. I referred him to pain management for a series of 3 epidural injections which did lessen the pain from [10] out of [10] to [7] out of [10]. [Appellant] still has weakness into his left leg. He has trouble walking upstairs and getting in and out of high spaces.”

Dr. Friedman diagnosed intervertebral disc disorder with myelopathy, lumbar region, unstable. She advised that appellant was unable to perform his usual duties at the employing establishment, as he was unable to walk and climb long distances or lift more than five pounds.

By decision dated April 25, 2007, the Office denied appellant’s claim, finding that he failed to submit sufficient medical evidence in support of his claim. The Office stated that appellant had failed to submit medical evidence establishing that he sustained a condition or disability resulting from the March 8, 2007 work incident.

Appellant underwent an MRI scan on February 22, 2007, the results of which showed multiplanar bulging of the L4-5 disc, annular bulging of the L3-4 disc, a suspicion of lateral disc herniation into the left foramen at L3-4, narrowing at L4-5 due to disc bulging, hypertrophic changes in the facet joints and an overall impression of moderate degenerative change.

In a duty status report dated May 8, 2007, Dr. Hassinger stated that appellant had chronic low back pain and lower leg weakness which inhibited his ability to perform the duties of his job.

On May 1, 2007 appellant requested an oral hearing, which was held on September 19, 2007. In an October 12, 2007 report, Dr. Friedman stated:

“[Appellant] presented to my office with the complaint of low back pain which he sustained at work on February 12, 2007. He stated [that] the injury occurred due to a slip on a wet floor on February 6, 2007. On examination, he had tightening and bogginess of the lumbar paraspinal muscles. I did lumbar [x]-rays and started him on a Medrol Dose Pack, in addition to giving him a Depo[-]Medrol injection

due [to] his symptoms reflecting some nerve involvement. [Appellant] subsequently continued to complain of low back pain, weakness into his legs. I ordered an MRI [scan] which demonstrated bulging intervertebral discs at L3-4, which would explain his symptomatology. He went on to receive epidural injections for pain relief through our pain specialist. In my medical opinion, his disc damage and lower lumbar back strain were directly caused by the fall at work.”

In an October 19, 2007 report, Dr. Timothy Morley, a chiropractor, stated that appellant experienced excruciating pain in the left lumbar and cervical areas. He reviewed the history of injury and the diagnostic findings and stated:

“It is important to note that, prior to the injury of January 29, 2004, [appellant] reports that he experienced essentially no back or neck pain. The ongoing pain, along with my physical examinations, is documented within the enclosed medical records. Considering the above, I can state to a reasonable degree of medical certainty that the injury of January 29, 2004 caused the lumbar sprain/strain, cervical sprain/strain and substantially aggravated the underlying disc bulging at L3-4 and L4-5. As such I am recommending that this claim be amended to include those diagnoses.”

By decision dated November 15, 2007, an Office hearing representative affirmed the April 25, 2007 Office decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing that 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>2</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>3</sup>

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 he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

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<sup>1</sup> 5 U.S.C. § 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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>6</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on February 6, 2007 caused a personal injury and resultant disability.

Appellant submitted reports from Drs. Hassinger and Friedman which indicated that he experienced severe lower back pain after he stumbled at work on February 6, 2007. The pain radiated into the left lower leg and foot, with appellant experiencing some residual leg weakness. Dr. Friedman stated that a lumbar MRI scan demonstrated moderate disc degeneration with multiple herniated discs impinging upon a nerve root and diagnosed intervertebral disc disorder with myelopathy of the lumbar region. She opined that appellant was unable to perform his usual work duties, as he was unable to walk and climb long distances or lift more than five pounds.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed

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<sup>5</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>6</sup> *Id.*

<sup>7</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> *John J. Carlone*, *supra* note 4.

in support of stated conclusions.<sup>10</sup> Although Dr. Friedman's report did present several diagnoses of appellant's condition, she did not indicate whether these conditions were causally related to the February 6, 2007 employment injury. The reports from Dr. Hassinger, a chiropractor, do not constitute medical evidence pursuant to section 8101(2) of the Act, as they do not contain a diagnosis of subluxation as shown by x-ray. There is insufficient evidence of record, therefore, to establish an injury due to the accepted incident. Appellant failed to provide a rationalized, probative medical opinion relating appellant's current condition to any factors of his employment. The Office, therefore, properly denied compensation for a claimed lower back injury in its April 25, 2007 decision.

Following the April 25, 2007 decision, appellant submitted reports from Drs. Friedman, Hassinger and Morley. As indicated above, the reports from chiropractors Hassinger and Morley do not constitute evidence pursuant to section 8101(2) because they do not contain diagnosis of subluxation as shown by x-ray. Dr. Friedman's October 12, 2007 report reiterated her previous findings and indicated that MRI scan results showed bulging intervertebral discs at L3-4, which could explain appellant's symptomatology. She also opined that appellant's disc damage and lower lumbar back strain were directly caused by the fall at work.

Dr. Friedman's October 2007 report is insufficient to establish appellant's claim. While it presents a diagnosis and indicated summarily that appellant's condition resulted from his employment, it failed to discuss the employment incident or sufficiently explain the medical process through which the February 6, 2007 work accident would have caused the claimed condition. This report, therefore, does not contain a probative, rationalized medical opinion that appellant's claimed lower back injury was causally related to his February 6, 2007 work incident.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Accordingly, as appellant has failed to submit any probative medical evidence establishing that he sustained a lower back injury in the performance of duty, the Office properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed lower back injury was sustained in the performance of duty.

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<sup>10</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15 and April 25, 2007 decisions of the Office of Workers' Compensation Programs' are affirmed.

Issued: July 9, 2008  
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