



pain.”<sup>1</sup> After working two hours a day for several months, he stopped work on September 13, 2001. Appellant clarified that he was claiming occupational injuries to his cervical and thoracic spine and left shoulder based on his physical activities at work beginning in 1987. He also claimed a traumatic injury to his lower spine, groin, legs, feet and neck on April 23, 2001.

On April 11, 2003 Dr. J.J. Steingard, a family practitioner, and Dr. Mark A. Testa, a Board-certified osteopath specializing in family practice, reported that they had treated appellant from June 5, 1990 through February 21, 2003. They reviewed appellant’s description of his responsibilities as a revenue officer beginning in August 1987. Drs. Steingard and Testa reviewed diagnostic studies from 2000 to 2002 and evaluations performed by Dr. Marc S. Zimmerman, a Board-certified orthopedic surgeon, in 2000 and 2001. Drs. Steingard and Testa offered the following opinion:

“It is my opinion, within a reasonable degree of medical certainty that as a direct result of his employment with the [employing establishment], [appellant] sustained a cervical and thoracic strain and sprain. I have come to this conclusion based on my knowledge of this patient and physical exam[ination]s of the patient prior to and since the onset of his neck, upper back and bilateral upper extremity complaints. With the onset of his complaints, chronologically and epidemiologically related to his employment and with the assistance of the before mentioned electrodiagnostic and MRI [magnetic resonance imaging] [scan] results, it is my opinion, within a reasonable degree of medical certainty, that as a direct result of his employment conditions with the [employing establishment], [appellant] has suffered serious and permanent injuries, which will continue to interfere with his normal daily activities and occupations for the remainder of his lifetime, especially in inclement weather. He will continue to have pain of varying intensities and severities, as a result of these injuries and will always run the risk of exacerbations that could leave him temporarily or even permanently totally disabled.

“Because of the nature of his injuries and high incidence of reoccurrence of same and having reached maximum medical improvement, his condition leaves him completely and permanently disabled from maintaining gainful employment with a poor prognosis of regaining any meaningful function. These opinions are based

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<sup>1</sup> Appellant had other claims. The Office accepted that he developed bilateral carpal tunnel syndrome in the performance of duty. OWCP File No. 032014745. It also accepted that he fell off a chair and injured his neck, wrist and low back on February 3, 1994 and aggravated a herniated disc on May 21, 1998 while sitting in a chair. OWCP File No. 030236194.

on the patient's current symptoms, past and present history and results of diagnostic studies."<sup>2</sup>

The Office referred appellant, together with the case file and a statement of accepted facts,<sup>3</sup> to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. On January 11, 2006 Dr. Hanley related appellant's history, including the following:

"The [appellant] was out of work from July 2000 until April 23, 2001. In March 2001, he was seen by Dr. Valentino who felt that he had recovered from his prior industrial injury relative to his back. [Appellant] returned to work and on the day that he returned he was unloading some boxes of his office supplies and after only an hour or two he developed enough pain that he quit. He then worked for about five months but only worked a couple of hours a day the entire time and finally was taken off work by [a doctor] in September 2001 and has not worked since."

Dr. Hanley described his findings on physical examination and diagnosed chronic degenerative joint disease of the spine and extremities complicated by deconditioning and morbid obesity. He offered the following opinion:

"First of all, at this point the only injury that I believe [appellant] suffers from that would be directly related to work exposure would be his bilateral carpal tunnel syndrome. He worked at what I would consider a semi-sedentary type of position for 13 years and I do not believe that that activity has led to any of the spinal or musculoskeletal complaints he has at this time. Clearly, the episode of moving boxes on April 23, 2001, which is not even documented in the medical record, has no bearing on his current symptoms today. I believe that his current symptoms today are totally aligned with his degenerative process, his poor conditioning and his obesity."

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<sup>2</sup> On May 21, 2005 Drs. Steingard and Testa offered substantially the same report with a fuller description of appellant's work activities. They added left shoulder sprain and degenerative change to the conditions directly caused by appellant's employment and offered additional analysis: "Our feeling is that these previously mentioned duties caused him aggravation to his shoulder, neck and back condition. As you can see from his statement he was required to sit for long periods of time while meeting with taxpayers going over substantial amounts of documentary evidence, do research on a computer and perform other repetitive caused [sic] or aggravated his shoulder, neck and back conditions."

<sup>3</sup> The statement of accepted facts stated in part: "[Appellant] returned to work on April 23, 2001. While he was off work, his belongings had been packed in boxes due to an office move. [Appellant] began unpacking and moving the boxes and placing the contents in cabinets. He felt pain while performing this work. [Appellant] tried to relieve the pain by sitting in his new high back ergonomic chair. However, the chair was not an 'obusform orthopedic chair' as recommended by his doctor, but a 'Superiorchair, Performa 3,' which he felt aggravated his back condition. He felt back pain and muscle spasms into his legs and feet and pain and stiffness in his neck. [Appellant] began working only two hours per day. His job duties did not require any constant repetitive work, bending or lifting and he was not required to carry his lap top to field locations. After working two hours per day for several months, he stopped work completely on September 16, 2001."

“Therefore, it is my belief that he does not currently suffer from an industrial injury to the neck and shoulders or to the lower back that is reasonably related to any of the activities that are outlined in the Statement of Accepted Facts. He does not have significant changes on his MRIs. There is no clear evidence of herniation causing canal stenosis or neurologic compromise.”

In a decision dated February 2, 2006, the Office denied appellant’s claim for compensation. It found that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events. The Office found that while Dr. Testa, as the attending physician, was familiar with appellant’s history, he did not provide adequate rationale for his opinion.

Appellant requested an oral hearing before an Office hearing representative. He submitted a May 1, 2006 report from Dr. Zimmerman, who stated that he last saw appellant on February 13, 2003. He related appellant’s history and electrodiagnostic studies. Dr. Zimmerman reported that appellant had chronic neck and upper thoracic pain with underlying degenerative arthritis and moderate central spinal stenosis at C5-7. He offered the following opinion:

“It is also my opinion within a reasonable degree of medical certainty that [appellant’s] neck and shoulder conditions were caused by the repetitive nature of his job as a revenue officer and aggravated by his job. His job required him to sit for long periods of time meeting with taxpayers going over substantial amounts of documentary evidence, do research on a computer and perform other repetitive functions using his arms and neck, sometimes in an awkward position.”

Appellant also submitted a June 19, 2006<sup>4</sup> report from Dr. Testa, who listed work activities that appellant characterized as ergonomically poor. Dr. Testa reviewed Dr. Hanley’s report and appellant’s injuries in 1994, 1995, 1998 and 2000. He also reviewed a number of electrodiagnostic studies. Dr. Testa stated that it was his opinion, within a reasonable degree of medical certainty, that appellant sustained the following acute, post-traumatic and chronic injuries as a direct result of the described work activities: (1) strain and sprain of the cervical, dorsal and lumbar spine and bilateral shoulders; (2) lumbar spinal stenosis; (3) thoracic spondylolysis C6-7; (4) disc bulge L4-5 and C4-6; (5) mild bilateral foraminal stenosis at C6; (6) moderate central cervical spinal stenosis; (7) L5-S1 bilateral radiculopathy; (8) L4-5 herniated nucleus pulposus; and (9) bilateral carpal tunnel syndrome. Dr. Testa stated that causation in regard to appellant’s cervical, thoracic and lumbar injuries was spelled out in other reports. He then offered essentially the same opinion he provided on April 11, 2003.

In a decision dated July 31, 2006, the Office hearing representative affirmed the denial of appellant’s claim. She adjudicated appellant’s claim as a traumatic injury, as he clearly identified through his statements and his testimony the moving and lifting of boxes on April 23, 2001 as the basis for his cervical and back pain. The hearing representative noted that Dr. Testa did not discuss the lifting and unpacking appellant performed on April 23, 2001 and that Dr. Zimmerman did not discuss April 23, 2001 and its impact, if any, on appellant’s neck and back conditions. The hearing representative noted that there was no contemporaneous medical

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<sup>4</sup> The report is misdated as 2005.

evidence to establish that appellant sustained a cervical or lumbar condition or an aggravation of an underlying degenerative condition as a result of lifting and moving packing boxes. As Dr. Hanley's was the only medical report to provide a full history of work factors and traumatic injuries, including the events of April 23, 2001, the hearing representative found that it represented the weight of the medical evidence. The hearing representative advised appellant to consider filing a separate occupational illness claim for his lumbar and cervical conditions.

Appellant requested reconsideration and submitted an April 25, 2007 report from Drs. Steingard and Testa, who stated:

"I have reviewed the statement made by [appellant] regarding the occurrence on April 23, 2001. [Appellant's] first day to work after being out for the past nine months due to a lower back injury, he arrived back to work [and] found all of his work and personal possessions had been pack[ed] up in boxes in various weights due to [an] office move. He started to unpack the boxes, which were stacked three to four high on the floor and one to two high on the desk area. This required him to lift and move the boxes in order to remove the contents. The contents were then placed in different file cabinets and overhead cabinets. [Appellant] immediately started experiencing pain. He attempted to relieve the pain by sitting for a while but it did not help. [Appellant] also tried walking around the office but this did not help."

Drs. Steingard and Testa opined that as a direct result of this incident, appellant sustained acute and post-traumatic (1) strain and sprain of the cervical, thoracic and lumbar spine; (2) myofasciitis of the cervical, thoracic and lumbar spine; (3) injury to the myoligamentous supporting structure of the cervical, thoracic and lumbar spine; and (4) lumbar radiculitis. They noted that, while working on April 23, 2001, appellant experienced burning in lower back, burning in groin and thighs, pain running down thighs to the back of legs to knees, stiffness and muscle spasms of the back, numbness in the toes and feet, pain, tightness and stiffness at the back of the neck at base where shoulders and neck meet, stiffness up the neck from the base.

In a decision dated July 27, 2007, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It noted that Drs. Steingard and Testa did not display a detailed knowledge of the incident on April 23, 2001, including the fact that appellant worked only three hours that day and the limited number of boxes he moved or unpacked and did not provide any rationale to explain why the first opinion they provided to support an April 23, 2001 injury came over five years after the claimed injury.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> An employee seeking compensation under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event,

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<sup>5</sup> 5 U.S.C. § 8102(a).

incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>6</sup>

Causal relationship is a medical issue<sup>7</sup> 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 of the physician must be based on a complete factual and medical background of the claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Office does not dispute that on April 23, 2001 appellant returned to work to find that his belongings were packed in boxes due to an office move and that he began moving and unpacking these boxes and placing the contents in cabinets. It denied appellant's claim because the medical opinion evidence failed to establish that this incident or event caused an injury.

Appellant has submitted only one medical opinion that supports his claim of a traumatic injury on April 23, 2001. On April 25, 2007 Dr. Steingard, a family practitioner, and Dr. Testa, a Board-certified osteopath specializing in family practice, related a history of appellant's April 23, 2001 work activities that is consistent with the Office's statement of accepted facts. The doctors described appellant's contemporaneous complaints and reported with a reasonable degree of medical certainty that as a direct result of what happened on April 23, 2001 appellant sustained acute, post-traumatic injuries to the cervical, thoracic and lumbar spine, including strain and sprain and myofasciitis and lumbar radiculitis.

The Board finds that this opinion has little probative value because Drs. Steingard and Testa offered no medical rationale to support their conclusion. They did not explain from a medical perspective how unpacking boxes on April 23, 2001 caused the diagnosed conditions or what it was that gave them a reasonable degree of medical certainty. Medical opinions unsupported by rationale are of diminished probative value.<sup>11</sup> It is not necessary that the evidence

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<sup>6</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>9</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>10</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>11</sup> See *Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.<sup>12</sup>

The April 25, 2007 report of Drs. Steingard and Testa is deficient for another reason. The report comes six years after the fact and appears to represent the first time these doctors have recognized an injury taking place on April 23, 2001. They examined and treated appellant 24 times after the date of the alleged injury, but they made no mention of it in their April 11, 2003 or May 21, 2005 or June 19, 2006 narrative reports. In this last report, Dr. Testa reviewed appellant's various injuries, from February 3, 1994 to early in 1995 to May 21, 1998 to June 27, 2000. He reported nothing about moving boxes on April 23, 2001. Also, Dr. Zimmerman, a Board-certified orthopedic surgeon, made no reference in his May 1, 2006 report to a work injury on April 23, 2001. Drs. Steingard and Testa must explain why, if appellant sustained acute, post-traumatic injuries to the cervical, thoracic and lumbar spine on April 23, 2001, he made no mention of it to them or, if he did, why they made no mention of it until April 25, 2007. The failure of the treating physicians to report such an injury raises some question as to the validity of appellant's claim.<sup>13</sup>

The Board will affirm the Office's decision to deny appellant's claim for compensation. He has not met his burden of proof because the medical opinion evidence he submitted to support a traumatic injury on April 23, 2001 has little probative value. The opinion of Dr. Hanley, a Board-certified orthopedic surgeon and Office referral physician, serves only to weaken his claim further. Without probative medical evidence to support causal relationship, there are no grounds to refer appellant to an impartial medical specialist under 5 U.S.C. § 8123(a).

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on April 23, 2001.

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<sup>12</sup> *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

<sup>13</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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