

degenerative changes and a protruding disc at L4-5.¹ Following back surgery in February 2004, she returned to limited duty. At the present, appellant was working full time with lifting restrictions of 10 pounds continually and 20 pounds intermittently but contended that she sometimes worked outside her restrictions and did not have ergonomically correct seating. This aggravated her back condition, causing constant back pain that radiated into her leg and foot. Appellant noted that she only worked between 24 and 32 hours per week. In a February 15, 2007 letter, she reiterated that she had a nonergonomic chair and could not work an entire pay period due to back pain. Appellant described her medications and noted that she attended school three nights a week studying criminal justice.

In reports dated November 7, 2005 to January 5, 2007, Dr. Stephen D. Heis, an attending Board-certified physiatrist, reported appellant's treatment regimen and that she was working light duty. In a February 21, 2006 report, he noted her complaint of increased pain in the right low back radiating into the right buttock with a trigger point in the right L5 area. On March 21, 2006 Dr. Heis advised that a magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated postoperative changes and her report that her back was aggravated by bending and lifting. On May 23, 2006 he provided lifting restrictions of 20 pounds occasionally and 10 pounds frequently with partial restrictions on pulling, pushing, standing, walking, etc. until November 23, 2006. In an August 22, 2006 report, Dr. Heis stated that appellant told him she could not continue her occupation because of her radiating back pain. On November 3, 2006 he advised that examination revealed normal strength and reflexes on the right with right L5 paraspinal tenderness. Dr. Heis stated that appellant's chair was not supportive and that she reported that she had to regularly lift trays of mail that weighed 20 to 30 pounds. He stated that no large disc herniation was seen on the MRI scan reported earlier. Dr. Heis provided a duty status report dated January 5, 2007 with restrictions of two to four hours sitting and reaching above the shoulder, one to two hours standing, bending and twisting, eight hours of walking, four hours of pulling/pushing, six to eight hours of simple grasping, four to six hours of fine manipulation and a weight restriction of 15 pounds continuously and 20 pounds intermittently. He noted that appellant planned to retire and concentrate on going to school full time.

The employing establishment advised that appellant did not have to pick up tubs of mail and had never requested a different chair. A modified-duty assignment accepted by appellant on August 19, 2006 provided that she was to flip-flop letters for eight hours, lifting one at a time with a five-pound lifting restriction and no prolonged sitting. A modified-duty assignment accepted by appellant on January 12, 2007 provided that she would flip-flop letters for six to eight hours, place mail into trays for eight hours with lifting restrictions of 15 pounds continuously and 20 pounds intermittently. Bending and stooping were limited to one to two hours and twisting to two hours. In a February 27, 2007 statement, William N. Watts, supervisor of distribution and operations, stated that he had read appellant's February 15, 2007 letter and concurred with her narrative regarding the job activities that she believed contributed to her condition.

¹ Appellant also reported that under file number 092029350 her claim was not approved. By decision dated July 6, 2006, Docket Number 06-524, the Board affirmed a December 8, 2005 Office decision finding that appellant had not sustained a back injury in January 2003 causally related to factors of her federal employment.

By decision dated March 13, 2007, the Office denied the claim on the grounds that appellant submitted no medical evidence that provided a definitive diagnosis in support of her claimed low back condition.

On April 12, 2007 appellant, through her attorney, requested a hearing. In a June 1, 2007 report, Dr. Martin Fritzhand, a Board-certified urologist, reported that appellant had sustained multiple low back injuries at work with accepted conditions of mild degenerative changes at L4-5 and a right disc protrusion at L4-5 with back surgery in February 2005. He advised that her symptoms resulted in an inability to maintain employment and that she had retired. Physical findings included diminished range of motion and evidence of nerve root damage with strength and sensory loss involving the right lower extremity. Dr. Fritzhand also provided an impairment analysis and concluded:

“It is not medically possible to segregate her complaints and findings into each specific claim. Symptoms and physical findings are clearly related to the degenerative changes and allowed conditions for which she did undergo operative intervention. And, any activity which would exacerbate her underlying musculoskeletal distress would result in symptoms of low back pain. Any remunerative employment would only result in ongoing low back pain. Her symptoms would certainly prevent her from maintaining remunerative employment.”

At the hearing, held on August 7, 2007, her attorney argued that Dr. Fritzhand’s opinion established causal relationship. By decision dated October 2, 2007, an Office hearing representative affirmed the March 13, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

Office regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”⁴ 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

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(ee).

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁵

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized 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.⁷ 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 causal relationship.⁸

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she has a diagnosed back condition causally related to factors of her federal employment. At the time she filed her claim on November 27, 2006, her modified position required that she flip letters for eight hours a day with a five-pound lifting restriction and no prolonged sitting. Appellant's attending physiatrist, Dr. Heis, advised on May 23, 2006 that she could lift 10 pounds frequently and 20 pounds occasionally. While appellant alleged that her back condition was caused by not having an ergonomic chair, the employing establishment advised that neither she nor Dr. Heis had ever requested one. Dr. Heis merely commented that her chair was not supportive. He did not address how the chair contributed to appellant's back condition, noting that she reported increased pain and stated that she planned to retire so that she could attend school full time. Dr. Heis also advised that appellant reported that she had to regularly lift mail trays weighing 20 to 30 pounds but did not otherwise discuss appellant's modified job duties. The employing establishment, however, advised that appellant did not have to lift mail tubs.

Dr. Fritzhand noted appellant's history of back injuries at work and the MRI scan findings of mild degenerative changes and a right disc protrusion at L4-5. He advised that "any remunerative employment would only result in symptoms of low back pain" which would

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Id.*

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

prevent employment. Dr. Fritzhand exhibited no knowledge of appellant's modified job duties. He did not address how her diagnosed back condition related to her employment activities.

The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relationship,⁹ and a diagnosis of "pain" does not constitute the basis for payment of compensation.¹⁰ Likewise, the fear of future injury is not compensable under the Act.¹¹ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹²

The Board finds that the reports of Dr. Heis and Dr. Fritzhand are not sufficiently rationalized to establish that appellant has an employment-related back condition caused by factors of her federal employment in November 2006. Neither physician provided a clear opinion that appellant's diagnosed condition was due to work factors, did not provide a sufficient description of her modified work duties or otherwise provide medical rationale explaining how her back condition was caused by her federal employment in November 2006 rather than other factors such as a continuation of the accepted back condition under other claims.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related back condition in November 2006.

⁹ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

¹¹ *Manuel Gill*, 52 ECAB 282 (2001).

¹² *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹³ *Robert Broome*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 2, 2007 be affirmed.

Issued: May 5, 2008
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