

employment based on a magnetic resonance imaging (MRI) scan. Appellant lifted broken ramps, truck doors in disrepair and pallets. He stated that his current conditions may also be related to a previous injury and surgery.

In a January 12, 2008 narrative statement, appellant related that he raised the trailer door of trucks to check the load of mail inside. He manually lifted dock truck ramps weighing several hundred pounds to unload mail. Appellant also lifted pallets of mail weighing hundreds of pounds and bulk mail containers weighing 2,000 pounds. He drove a forklift over ramps, which caused a bumpy ride.

In a December 5, 2007 report, Dr. Richard S. Wright, a chiropractor, stated that appellant had lumbar disc syndrome, which caused severe debilitating low back and leg pain. He opined that appellant's prognosis was uncertain and he was unable to work or sit for prolonged periods of time. In a December 21, 2007 insurance claim report, Dr. Wright stated that appellant sustained sciatica and a lumbosacral intervertebral disc. He opined that appellant became disabled on October 28, 2007. On December 21, 2007 Dr. Wright stated that appellant underwent a hemilaminectomy at L5-S1 with recurrent radiculopathy pain. He noted that a December 20, 2007 MRI scan of appellant's lumbar spine revealed postsurgical findings of a small right paracentral disc protrusion. The December 20, 2007 MRI scan was performed by Dr. Adam W. Specht, a Board-certified radiologist, who noted postsurgical findings on the right at L5-S1 with hemilaminectomy. He suspected a small focal right paracentral disc protrusion. Dr. Specht found loss of resolution of the right S1 nerve and local irritation of this nerve and milder degenerative findings at L4-5 with contact exiting the left L4 nerve. A January 7, 2008 medical report of Dr. Winifred D. Bragg, an attending Board-certified physiatrist, stated that appellant sustained herniated nucleus pulposus. She opined that he was totally disabled from December 3, 2007 through January 23, 2008.

By letter dated January 23, 2008, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence. The Office also requested that the employing establishment respond to appellant's allegation that he often lifted heavy objects at work. It further requested information regarding appellant's tasks and frequency and duration which he performed them, what precautions the employing establishment took to minimize the effects of his activities and a description of his position and physical requirements within 30 days. The employing establishment did not respond within the allotted time period.

Appellant submitted a description of his mail handler position, which required loading mail unto trucks and unloading and moving bulk mail received by trucks. It also required the operation of forklift trucks.

In a January 30, 2008 letter, appellant attributed his back injury to several work incidents. He stated that his physical reaction to these incidents was not unusual during the course of his workday. During the week of October 23 through 27, 2007, appellant lifted a trailer ramp that had a broken spring which made it very difficult for him to lift. He also checked a damaged contractor's trailer which caused considerable strain. Appellant had to bend over to pick up 100 to 200 bundles of magazines when the pallets broke. He drove a forklift a few times for longer periods of time than he should have driven. Appellant tried to avoid driving one to

two-hour stints since he had been out of work for three months from January 6, 2007 through late March 2007 or April 2007 with a similar stenosis condition. He drove the forklift nearly every day during the Christmas holiday rush for 11 or 12 hours per day. In either late September 2007 or early October 2007, appellant was out of work for one week with similar pain. He described his hip pain and medical treatment. Appellant noted that Dr. Bragg's reference to her postsurgical findings, were related to his surgery following a work-related injury for which he filed a claim with the Office in 1995 or 1996. He requested that the Office grant him an extension to submit additional information from Dr. Bragg. Appellant did not submit any additional medical evidence.

By decision dated February 25, 2008, the Office found that appellant did not sustain an injury in the performance of duty as he failed to establish that his work duties involved heavy lifting and jarring incidents. It also found that the medical evidence of record failed to establish that he sustained a medical condition causally related to the claimed employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 medical evidence required to establish a causal relationship is rationalized medical opinion 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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

identified by the claimant.⁴ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment, is sufficient to establish a causal relationship.⁵

ANALYSIS

Appellant alleged that he sustained a back injury due to a heavy workload which included lifting trailer truck doors, dock truck ramps and pallets of mail weighing several hundred pounds and bulk mail containers weighing 2,000 pounds and riding a forklift over ramps while working as a mail handler/group leader for the employing establishment. The Board finds that appellant was required to lift trailer truck doors, dock truck ramps, pallets of mail and bulk mail containers and ride a forklift in his federal employment. Appellant stated that he lifted truck doors and ramps weighing several hundred pounds to load and unload mail. He bent over to lift pallets of mail also weighing several hundred pounds. Appellant related that he lifted bulk mail containers weighing 2,000 pounds. He drove a forklift over ramps which resulted in a bumpy ride. A description of appellant's mail handler position required him to, among other things, load and unload mail onto and from trucks and move bulk mail received by trucks. It also required him to operate forklift trucks. The Board finds that the employment factors alleged to have caused his back condition are established.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that his back conditions were caused by the accepted employment factors. The December 5 and 21, 2007 reports of Dr. Wright, a chiropractor, stated that appellant sustained lumbar disc syndrome, sciatica and a lumbosacral intervertebral disc. He noted Dr. Specht's MRI scan finding of a small right paracentral disc protrusion post lumbar surgery at L5-S1. Dr. Wright opined that appellant's prognosis was uncertain and he was unable to work or sit for prolonged periods of time and as of October 28, 2007, he was totally disabled for work. However, section 8101(2) of the Act defines the term physician to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a spinal subluxation as demonstrated by x-ray to exist.⁶ Dr. Wright did not provide a diagnosis of subluxation as based on x-ray. For this reason, his reports do not constitute competent medical evidence in support of appellant's claim.

Dr. Specht's December 20, 2007 MRI scan report noted a small focal right paracentral disc protrusion and found loss of resolution of the right S1 nerve and local irritation of this nerve and milder degenerative findings at L4-5 with contact exiting the left L4 nerve postsurgery on the right at L5-S1 with hemilaminectomy. However, he did not address whether the diagnosed conditions were caused by the accepted employment factors. Dr. Bragg's January 7, 2008 report stated that appellant sustained herniated nucleus pulposus and that he was totally disabled from December 3, 2007 through January 23, 2008. However, she did not address the causal

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁶ 5 U.S.C. § 8101(2). See *Paul Foster*, 56 ECAB 208 (2004); *Linda Thompson*, 51 ECAB 694 (2000).

relationship between his diagnosed condition and the accepted factors of his employment. The Board, therefore, finds that these reports are insufficient to establish appellant's claim.

Appellant has not submitted rationalized medical evidence establishing that he sustained a back injury causally related to the accepted factors of his employment. He has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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