

his fingers, arms and legs and difficulty sleeping as a result of his federal employment. He alleged that his duty station was built on a nonlevel surface, requiring him to constantly recorrect and rebalance himself throughout his shift. Appellant first became aware of his condition on January 23, 2007 and first realized that it was employment related on March 31, 2007. By letter dated May 9, 2007, the employing establishment controverted his claim, noting that he had been on the job for two days.

In an April 4, 2007 x-ray report, Dr. Dennis Catheart, a chiropractor, noted subluxations at C1 through C7, T1 through T11 and L2 through S1. He also noted forward carriage and posterior weight bearing. Dr. Catheart provided treatment notes dated April 16 to 24, 2007 advising that appellant was disabled due to low back sprain/strain.

By letter to appellant dated May 10, 2007, the Office requested that appellant submit additional information.

In progress notes dated from April 4 through 26, 2007, Dr. Catheart diagnosed appellant with lumbar vertebral subluxation, low back pain, neuralgia/neuritis and muscle spasm. He performed low force manipulations to correct subluxations and increase joint mobility.

On April 26, 2007 Dr. Catheart advised that appellant could return to normal work duty on April 27, 2007. In notes dated through May 9, 2007, appellant could work normal duty. However, on May 10, 2007 Dr. Catheart noted that he could not work until further notice because his low back had worsened due to his work. From May 14 through 23, 2007, appellant was found disabled. In a May 23, 2007 note, Dr. Catheart stated that appellant could not work until further notice due to instability in the lumbosacral spine. On May 24, 2007, however, he advised that appellant could return to work at light duty effective May 29, 2007 and completed a work capacity evaluation. On May 29, 2007 the employing establishment made an offer of limited-duty employment. Appellant accepted this offer on June 1, 2007.

By letter dated June 22, 2007, the employing establishment indicated that appellant entered duty on January 7, 2007. From January 8 through 19, 2007 he attended classroom training. Appellant's initial date of duty at the checkpoint was January 21, 2007; however, he took sick leave on January 22, 2007 and alleged an injury on January 23, 2007 (the second day actually at the work site).

By decision dated August 3, 2007, the Office denied appellant's claim, finding that the medical evidence did not establish that his back condition was related to factors of his employment.

By letter dated June 18, 2007, Dr. Catheart noted that appellant was to undergo an orthopedic consultation with Dr. Michael A. Steingart. Dr. Catheart suspended further chiropractic treatment until the consultation was completed.

In a medical report dated July 17, 2007, Dr. Steingart, a Board-certified orthopedic surgeon, noted that appellant complained of sharp shooting pains down his right lower extremity. Appellant related his symptoms to working at an airport and standing on uneven ground. Dr. Steingart found no neurological deficits and no neurologic evidence of arthritis. He advised that a magnetic resonance imaging (MRI) scan showed L4-5 disc protrusion with annular disc

problems.¹ Dr. Steingart discussed the possibility of a series of epidural injections for treatment of appellant's back condition. On July 26, September 10 and October 4, 2007 he performed caudal epidurals with fluoroscopic guidance and epidurograms.

From April 30 through June 18, 2007, Dr. Catheart continued treatment with chiropractic adjustments.

By letter dated July 31, 2008 appellant, through his attorney, requested reconsideration. He submitted a July 24, 2008 report from by Dr. Catheart who stated that standing on a nonlevel work surface repeatedly for extended periods of time would cause postural stress on the lumbar spine and pelvis and lead to subluxations of the spine and sacrum. Dr. Catheart stated that a worker with an asymptomatic bulging disc in his lumbar spine who was required to stand on a nonlevel surface for extended periods of time would experience an exacerbation of that area which could incapacitate the worker. He advised that appellant's x-rays clearly listed subluxations in the lumbar spine. Dr. Catheart noted that the subluxations were consistent with appellant's symptoms and were caused by his job, which required standing on a nonlevel surface. He further noted that appellant's MRI scan confirmed that he had a bulging disc. Dr. Catheart opined, "It is my professional opinion that [appellant] had [an] asymptomatic bulging disc and experienced an exacerbation to the lumbar spinal area due to the postural stress and lumbar subluxations caused by the nonlevel work surface at his job."

By decision dated October 22, 2008, the Office denied modification of the August 3, 2007 decision, finding that medical evidence was not sufficient to establish causal relationship.

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.² An employee seeking benefits 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, 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.³

Causal relationship is a medical issue⁴ 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

¹ An MRI scan conducted on June 14, 2007 and interpreted by Dr. Jordan K. Cohen, a Board-certified neuroradiologist, as showing an L4-5 central disc protrusion with flattening of the thecal sac.

² 5 U.S.C. § 8102(a).

³ *Abe E. Scott*, 45 ECAB 164 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ 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.⁷

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that his back condition is causally related to his federal employment. The medical evidence of record is insufficient to establish a causal relationship between his L4-5 disc protrusion and the identified work factors. Appellant stated that his work as a transportation security screener involved working on a nonlevel surface for prolonged periods, which required him to constantly recorrect and rebalance himself throughout his shift. The employing establishment, in controverting his claim, noted that appellant had been on the job for only two days before he alleged an injury.

Most of the medical evidence of record does not address the issue of causal relationship. Dr. Steingart noted that appellant attributed his back pain to working on uneven ground at the airport. However, he never made this connection. Dr. Steingart did not provide his own opinion on causal relation. He did not address how appellant's employment would cause or aggravate the L4-5 disc protrusion noted on diagnostic testing. Dr. Catheart diagnosed subluxations at C1 through C7, T1 through T11 and L2 through S1 and noted forward carriage and posterior weight bearing.⁸ His progress notes diagnosed lumbar vertebral subluxation, low back pain, neuralgia/neuritis and muscle spasm, for which appellant was placed off duty. However, these notes do not establish a causal relationship between his alleged work factors and his diagnosed conditions. The only medical document that addressed a possible causal connection between appellant's work and his back condition was the July 24, 2008 report of Dr. Catheart, who stated, generally, that standing on a nonlevel work surface repeatedly for extended periods of time would cause postural stress on the lumbar spine and pelvis and lead to subluxation of the spine and sacrum. He noted that appellant's subluxations were consistent with his symptoms and were caused by standing on a nonlevel surface for an extended period of time. Dr. Catheart did not address appellant's employment history of having worked for two days prior to claiming injury. He did not address how appellant's job required standing on nonlevel surfaces for extended periods of time. Dr. Catheart's opinion that his medical conditions were caused by standing on a nonlevel surface for extended periods of time does not account for the brief period of time appellant held his position before claimed injury. The Board has held that medical opinions which are based on an incomplete or inaccurate factual background are of diminished probative value.⁹

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ Under section 8101(a) of the Act, chiropractors are defined as physicians and their reports considered medical evidence to the extent they treat spinal subluxations as demonstrated to exist. *See Sean O'Connell*, 56 ECAB 195 (2004).

⁹ *See Frank Luis Rembisz*, 52 ECAB 147 (2000).

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹⁰ The medical evidence is insufficient to establish that appellant's back condition was caused or aggravated by his federal employment.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a back condition causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2008 is affirmed.

Issued: August 6, 2009
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

¹⁰ *John D. Jackson*, 55 ECAB 465 (2004); *see, supra* note 7.