



the frame of the warehouse doorway. He stopped work that day. Appellant was released to resume full-time duty with no restrictions on September 28, 2006. The Office accepted his claim for lumbar sprain and right hand sprain.

On May 1, 2008 appellant filed a claim for compensation alleging that he sustained a recurrence of disability causally related to his September 14, 2006 employment injury. He indicated that he had a herniated disc and was limited to no heavy lifting with possible surgery.

On April 5, 2007 Dr. Robert A. Kroopnick, a Board-certified internist and appellant's primary care physician, reported that appellant appeared to have a reexacerbation of his September 14, 2006 injuries: "He now has reinjured the above structures and is again experiencing moderate incapacitating pain."

An April 4, 2008 magnetic resonance imaging (MRI) scan showed spondylotic change and right paracentral disc protrusion at L5-S1 with probable compression of the right S1 nerve root and a mild bulging annulus at L4-5. On May 1, 2008 Dr. Kroopnick reported: "This injury [is] a direct result of the aforementioned fall which there has been extensive corresponds [sic] to this point."

In a decision dated June 19, 2008, the Office denied appellant's recurrence claim. Noting a break in medical treatment from September 28, 2006 to April 5, 2007, a lack of bridging medical evidence, and a lack of medical rationale to explain how appellant sustained the herniated disc found on April 4, 2008, the Office found that his need for medical treatment was not established to be causally related to the September 14, 2006 incident.

Dr. Kroopnick disagreed with the Office's decision. On July 15, 2008 he noted that appellant was first injured on September 14, 2006 and that an MRI scan was recommended to determine whether he had a herniated disc, but appellant could not do it. "It was my opinion that he most assuredly had a herniated dis[c] at that time which is apparent in my notes. I would not have recommended it if this was not my opinion." Dr. Kroopnick noted that as time went on and appellant did not get better, he eventually obtained an MRI scan, which demonstrated discogenic disease requiring surgery.

On July 15, 2008 Dr. Neal J. Naff, a Board-certified neurosurgeon, who performed surgery on appellant on June 2, 2008, explained that it was well known that herniated discs can occur with repetitive strain activities at work. "Therefore it is very reasonable to note that [appellant's] injury was related to his on-the-job injury."

On November 14, 2008 Dr. Robert A. Smith, a Board-certified orthopedic surgeon and Office referral physician, related appellant's history of injury and his findings on physical examination. He reviewed the April 2, 2008 MRI scan as well as an MRI scan obtained on July 13, 2006, two months before appellant's employment injury. The July 2006 MRI scan

showed a small right paracentral focal disc extrusion at L5-S1 which contacted the traversing right S1 nerve root. Dr. Smith offered his opinion on causal relationship:

“It appears that the only accepted conditions for the reported incident of September 14, 2006, [were] a soft tissue sprain of the hand which is obviously completely recovered at this time and a soft tissue sprain of the back which, according to the examination, has also recovered. Based on the findings of the two MRI [s]cans from July 2006 and April 2008, there does not appear to be any causal connection between the reported herniated disc at L5-S1 and the September 14, 2006, work incident. This is based on the fact that there is no interval change noted between the two MRI [scan] [s]tudies, one done before the reported accident and one done after the reported accident. As noted, the spine surgery that [appellant] had by Dr. Naff in June 2008 is, therefore, unrelated to the work incident of September 14, 2006.”

In a decision dated December 3, 2008, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It noted that neither Dr. Kroopnick nor Dr. Naff addressed the June 2006 MRI scan. The Office found that the weight of the medical opinion evidence rested with Dr. Smith, who reported no interval change on the postinjury MRI scan.

### **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 his duty.<sup>1</sup> A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>2</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>3</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his claimed condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the claimed condition is related to the injury.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

## ANALYSIS

The issue raised by appellant's May 1, 2008 claim for compensation is whether his herniated disc at L5-S1 and back surgery of June 2, 2008 are causally related to the September 14, 2006 injury. Appellant bears the burden of proof to establish such a connection by submitting a well-reasoned medical opinion explaining how the September 14, 2006 injury caused or contributed to his herniated disc condition such that he required surgery.

Dr. Kroopnick, the primary care physician, disagreed with the denial of appellant's claim. He diagnosed appellant as having sustained a herniated disc following the September 14, 2006 employment injury, which was borne out by the later MRI scan. However, Dr. Kroopnick did not explain how he was able to determine that the incident on September 14, 2006 caused the herniated disc. The mere fact that a medical condition is seen after an incident at work does not establish a causal connection.<sup>5</sup> The opinion of Dr. Kroopnick is not well rationalized in the absence of his review of diagnostic testing preexisting the September 14, 2006 injury.<sup>6</sup>

Dr. Naff, the surgeon, also opined that the herniated disc seen on the April 2008 MRI scan was related to appellant's on-the-job injury. He stated that it is well known that herniated discs can occur with repetitive strain activities at work, but appellant did not attribute her condition to repetitive activities. Appellant claimed a specific traumatic injury on September 14, 2006 when he tried to turn a corner while walking an electric pallet power jack. The jack pulled on him, throwing him against the frame of the warehouse doorway. Dr. Naff did not explain how this traumatic incident, not repetitive activities at work, caused appellant's herniated disc. Moreover, he did not address the July 13, 2006 MRI scan obtained two months before the September 14, 2006 employment injury. This imaging study, as reviewed by Dr. Smith, showed the same disc extrusion at L5-S1 and contact with the right S1 nerve root. It appears that the L5-S1 herniated disc preexisted the employment injury, a subject appellant's physicians did not discuss. Moreover, Dr. Smith found that the April 2008 MRI scan findings demonstrated no significant interval change from July 2006. Because the medical evidence appellant submitted to support his claim does not establish a causal relationship between his herniated disc at L5-S1, for which he had surgery, and the incident at work on September 14, 2006, the Board finds that he has not met his burden of proof. The Board will therefore affirm the Office's December 3, 2008 decision denying compensation for appellant's herniated disc.

On appeal, appellant contended that the September 14, 2006 incident did not cause his herniated disc. He stated that the herniation seen on the July 2006 MRI scan came from repeated heavy lifting on the loading docks beginning in May 2006, after his position changed from audio visual specialist to materials handler. Appellant noted that the September 14, 2006 incident simply compounded a preexisting work injury. The Board notes that this issue was not raised before the Office or adjudicated in the decision currently on appeal. The only issue before the Board on this appeal is whether a causal relationship exists between his herniated disc and the accepted employment injury on September 14, 2006.

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<sup>5</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>6</sup> See *Louis T. Blair, Jr.*, 54 ECAB 348 (2003).

Appellant also contends that his back problems are not service connected. He had back pain for only two months in 1983 while serving in the army, but he did not have back pain prior to May 2006. This is apparently in response to Dr. Smith's observation that: "[Appellant] reports a history of prior back pain and a prior right knee and leg injury when he was in the service." Again, this was not a factor in the Office's decision. The Office did not deny benefits because of any back pain appellant may have had in the Army. It denied benefits because neither Dr. Kroopnick nor Dr. Naff offered a sound, well-reasoned opinion explaining how the September 14, 2006 incident caused or aggravated appellant's herniated disc at L5-S1. Causal relationship is a medical issue. The second opinion obtained from Dr. Smith, who offered rationale negating causal relationship, represents the weight of medical evidence as it is based on an accurate history of injury and a comparison of the relevant diagnostic studies.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his herniated disc at L5-S1 is causally related to his September 14, 2006 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board