

In support of her claim, appellant submitted an August 23, 2007 report from Dr. Victor Romano, a Board-certified orthopedic surgeon, who reported that she has persistent pain in the neck and arm. Dr. Romano noted that appellant had seen a neurosurgeon who recommended surgery to correct the Chiari malformation and that until she had the surgery she was to keep off work.

Appellant submitted information concerning Chiari malformation and a September 6, 2007 report from Dr. Herbert Engelhard, a Board-certified neurosurgeon, who opined that appellant's Chiari malformation was aggravated by her work activities, especially if she had to lift things above her head and extend her neck a lot.

By personal note dated September 17, 2007, appellant asserted that she believed that her condition was caused by her employment because she performed a lot of repetitive overhead lifting, bending, stretching and twisting while performing her work duties and that these activities put tremendous strain on her back and neck.

Appellant submitted a November 5, 2007 note signed by Dr. Mark Sokolowski, who cervical degenerative disc disease, carpal and cubital tunnel syndrome status post surgery and Chiari malformation of the cervical syrinx. Dr. Sokolowski noted that he could not comment as to the causation of appellant's cervical spondylosis, but that it was certainly possible that her work activities were exacerbating her spondylosis.

Appellant also submitted an undated letter in which she stated that she was born with Chiari malformation and asserted that she could have gone through life without any symptoms but for the work she did at the employing establishment.

By decision dated November 27, 2007, the Office denied appellant's claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

Appellant requested reconsideration.

In support of her reconsideration request, appellant submitted a November 15, 2007 note in which Dr. Sokolowski repeated the substance of his November 5, 2007 note. She submitted a duplicate copy of Dr. Sokolowski's November 5, 2007 note.

Appellant submitted a November 6, 2007 note in which Dr. Engelhard diagnosed musculoskeletal back, neck and shoulder pain, and Chiari malformation. Dr. Engelhard reported that she had a disc bulge on her lumbar magnetic resonance imaging (MRI) scan. He reported that appellant did not seem to have any acute decompression from the Chiari malformation or the syrinx. Dr. Engelhard also noted that appellant gave him a strong history that her work activities, lifting over her head and even sorting letters with her right arm, severely aggravated her neck, back and shoulder pain.

Additionally, in a January 23, 2008 note, Dr. Nancy Kuo, Board-certified in family medicine, reported that appellant was being treated for neurological symptoms related to Chiari malformation and syringomyelia as well as cerebellar herniation. She reported that examination revealed increased tone, muscular weakness and poor coordination consistent with her diagnosis.

Dr. Kuo noted that appellant was unable to perform the essential functions of her job, including a sedentary sorting job, due to upper extremity pain and numbness.¹

Dr. Engelhard, in a February 1, 2008 note, opined that appellant's Chiari malformation/syringomyelia was aggravated by her job if her job description included heavy lifting, especially if it was overhead lifting and bending. He reported that, due to worsening of her symptoms, appellant was unable to work and was scheduled for brain surgery.

Appellant submitted part of a December 11, 2007 report, in which Dr. Katherine Lynch, Board-certified in family medicine, reported that an MRI scan of her thoracic spine revealed the thoracic vertebral body heights were maintained. The thoracic cord was normal in caliber. Dr. Lynch noted that the MRI scan revealed findings at the T1 level of fluid collection consistent with a syrinx. She diagnosed that appellant with continuous, nonexpansile abnormal fluid collection within the central cord of the upper thoracic spine that was highly suggestive of a syrinx.

Appellant submitted a July 25, 2007 report signed by Dr. Ahmed S. Sohail, a Board-certified internist, who reported that an MRI scan identified Chiari malformation. Dr. Sohail diagnosed her with: Chiari malformation with cerebellar tonsils extending 20 millimeter below the level of the foramen magnum. He noted that appellant's ventricles were normal in size with no hydrocephalus. Dr. Sohail also noted that the cervical spinal cord was not visualized on the brain MRI scan, precluding evaluation of syrinx. Finally, he noted the presence of three small foci of abnormal signal in the white matter of the frontal and parietal lobes that were suggestive of chronic vessel ischemic disease.

By report dated July 9, 2007, Dr. Romano reported that an MRI scan of appellant's cervical spine revealed a syrinx within the lower cervical and upper thoracic cord. He reported that the syrinx extended from C6 to T3 with a component at T4 as well. Cerebellar tonsillar ectopia was present with normal position of the fourth ventricle. Dr. Romano noted that mild degenerative changes were present in the cervical spine with some tiny anterior spur formation at multiple levels including C3, C4, C5 and C6. He also noted the presence of minimal bulging at C3-4, C4-5, C5-6, C6-7 and C7-T1 but no significant spinal stenosis.

By decision dated November 12, 2008, the Office denied modification of its November 27, 2007 decision.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment

¹ The Board notes that appellant submitted a January 18, 2008 medical note signed by Margaret Kilmartin, registered nurse. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Because Ms. Kilmartin is not considered a physician for purpose of the Act, her reports and opinions do not constitute competent medical evidence and are of no probative value.

factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.³

ANALYSIS

Appellant identified heavy overhead lifting, bending, stretching and twisting as factors of her employment that caused her Chiari malformation, two spinal cysts and bulging discs. Her burden is to establish, through the production of probative medical evidence, that the diagnosed conditions are causally related to the identified employment factors. The Board finds that the evidence of record is insufficient to support appellant's claim because it lacks rationalized medical evidence establishing a causal relationship between appellant's Chiari malformation, two spinal cysts and bulging discs and the identified factors of her employment.

The relevant medical evidence of record consisted of medical reports and notes from Drs. Engelhard, Kuo, Lynch Romano, Sohail, Sokolowski. Taken as a group, these physicians' medical reports are of limited probative value as they lack an opinion on the causal relationship between a diagnosed condition and the identified factors of appellant's employment. The Board has consistently held that medical reports and notes lacking an opinion on causal relationship are of limited probative value.⁴

Dr. Engelhard, in his September 6, 2007 report and February 1, 2008 note opined that appellant's Chiari malformation was aggravated by her work activities, especially if she had to lift things above her head and extend her neck a lot. This report and note are of diminished probative value because in neither document does Dr. Engelhard proffer a rationalized explanation for his concerning the causal relationship between appellant's condition and the employment factors she identified. Similarly, Dr. Engelhard's November 6, 2007 note merely reiterated appellant's allegation that her work activities aggravated her condition, without providing additional details or explanation and, therefore, is of limited probative value in this

² See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also, *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

case. Deficient on causal relationship, Dr. Engelhard's medical reports and note are of diminished probative value.

Dr. Kuo, in her January 23, 2008 note, opined, without explanation or analysis, that appellant was unable to perform the essential functions of her job, including a sedentary sorting job, due to upper extremity pain and numbness. Her medical note is, therefore, insufficient because it lacks an opinion concerning the causal relationship between a diagnosed condition and the employment factors identified by appellant. Moreover, pain is a description of a symptom rather than a clear diagnosis of a medical condition and does not constitute a basis for the payment of compensation.⁵ Therefore, Dr. Kuo's note is of limited probative value

Dr. Lynch's December 11, 2007 report, likewise, is of limited probative value. Although her following review of an MRI scan of appellant's thoracic spine, diagnosed her with continuous, nonexpansile abnormal fluid collection within the central cord of the upper thoracic spine that was highly suggestive of a syrinx, her report contains no mention of or a rationalized opinion concerning the causal relationship between the condition she diagnosed and the identified factors of appellant's employment. Therefore, Dr. Lynch's medical report is of limited probative value

Moreover, in his July 9, 2007 report, Dr. Romano reported that an MRI scan of appellant's cervical spine revealed a syrinx within the lower cervical and upper thoracic cord. He reported that the syrinx extended from C6 to T3 with a component at T4 as well. Cerebellar tonsillar ectopia was present with normal position of the fourth ventricle. Dr. Romano noted that mild degenerative changes were present in the cervical spine with some tiny anterior spur formation at multiple levels including C3, C4, C5 and C6. He also noted the presence of minimal bulging at C3-4, C4-5, C5-6, C6-7 and C7-T1 but no significant spinal stenosis. Dr. Romano never proffered an opinion concerning the causal relationship between appellant's condition and the identified factors of appellant's employment. Thus, his medical report is of limited probative value.

Whereas Dr. Sohail's July 25, 2007 report proffered findings upon examination and a diagnosis, this report is also of limited probative value. As noted above, a medical report lacking an opinion on causal relationship is of limited probative value.⁶ As Dr. Sohail's report lacks an opinion on the causal relationship between appellant's condition and the identified factors of employment, it is of limited probative value.

Finally, Dr. Sokolowski's November 5, 2007 report is of no help because it too lacks an opinion on causal relationship and is speculative in nature. As noted above, medical reports and notes lacking an opinion on causal relationship are of limited probative value. In his November 5, 2007 medical note, Dr. Sokolowski noted that he could not comment as to the causation of her cervical spondylosis, but that it was certainly possible that her work activities were exacerbating her spondylosis. This too is an equivocal statement because, as a matter of law, such terms as "certainly," "could," "may," or "might be" indicate that the report is

⁵ *Robert Broome*, 55 ECAB 339 (2004).

⁶ *See supra* note 3.

equivocal, speculative or conjectural and, therefore, the report is of diminished probative value.⁷ Dr. Sokoloski's report lacks an opinion concerning the causal relationship between appellant's condition and the identified factors of appellant's employment. Lacking an opinion on causal relationship and speculative in nature, Dr. Sokolowski's medical report is of no probative value.

Although appellant, in a personal note, asserted that her Chiari malformation and two cysts were aggravated by her employment, the record reflects that this opinion was never proffered, with any sufficiently probative medical rationale, by a physician in a rationalized medical report. The Board has consistently held that an award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.⁸ The determination of whether employment factors caused an injury is generally established by medical evidence.⁹ The mere fact that a condition manifests itself or worsens during a period of employment¹⁰ or that work activities produce symptoms revelatory of an underlying condition¹¹ does not raise an inference of causal relationship between a claimed condition and employment factors. Rather, appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of her or her opinion.¹² Thus, appellant's belief that her condition was caused by factors of her employment is of no medical value.

As appellant has submitted no competent and probative rationalized medical evidence in support of her claim, she has failed to discharge her burden of proof and, therefore, has not established that she sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

⁷ See *supra* note 4.

⁸ *D.D.*, 57 ECAB 734 (2006); *Patricia J. Glenn*, 53 ECAB 159 (2001). See also *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

⁹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁰ *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹¹ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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