

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLADYS P. DOWNS and DEPARTMENT OF THE AIR FORCE,  
WRIGHT-PATTERSON AIR FORCE BASE, Ohio

*Docket No. 97-329; Submitted on the Record;  
Issued December 2, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability after November 17, 1988 causally related to her November 17, 1988 employment injury.

This is the third appeal before the Board in this case. By order dated December 23, 1992, the Board dismissed the appeal as untimely and granted the Director of the Office of Workers' Compensation Programs' request for reconsideration for further development.<sup>1</sup> By decision dated April 6, 1995, the Board remanded the case to the Office for further development on the issue of whether appellant had sustained a recurrence of disability.<sup>2</sup> The law and facts as set forth in the previous decision and orders are incorporated herein by reference.

Subsequent to the April 6, 1995 Board decision, by letter dated May 25, 1995 the Office asked that appellant describe the work activities that she believed were responsible for the November 17, 1988 injury and her current condition. In response, appellant reiterated that prolonged writing on November 17, 1988 caused pain to the head, neck, chest and shoulders and submitted an April 16, 1987 employing establishment memorandum,<sup>3</sup> a June 1, 1987 letter from the employing establishment,<sup>4</sup> and an October 29, 1991 report from Dr. Charles L. Walters, a Board-certified neurologist. By decision dated August 26, 1995, the Office denied that appellant

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<sup>1</sup> Docket No. 92-1424.

<sup>2</sup> Docket No. 93-1744.

<sup>3</sup> This listed limitations to appellant's physical activity, including "some writing."

<sup>4</sup> The employing establishment advised that appellant was seeking employment under a federal handicapped program, that she had a 40 percent disability resulting from an injury aggravated by carpal tunnel syndrome, that while she could write, her ability to do repetitive tasks requiring extensive fine finger dexterity with the right hand was limited.

sustained a recurrence of disability on the grounds that the medical evidence was insufficient to establish the claim.

Following appellant's request, a hearing was held on May 21, 1996. By decision dated September 20, 1996, an Office hearing representative found that appellant failed to submit rationalized medical evidence to support her contention that her neck condition was causally related to the November 17, 1988 employment injury and denied the recurrence claim. The instant appeal follows.

The Board finds this case is not in posture for decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.<sup>5</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup> Causal relationship is a medical issue,<sup>7</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.<sup>8</sup> Moreover, 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.<sup>9</sup>

In this case, the Office accepted that appellant sustained an employment-related right hand and arm strain due to excessive writing on November 17, 1988. The medical evidence relevant to the cause of her current diagnosis of cervical spondylosis with mild myelopathy include a December 27, 1988 report from Dr. Miguel Pirela-Cruz, a Board-certified orthopedic surgeon, who checked a "yes" box indicating that appellant's condition was employment related, stating she should find another line of work as her current condition was aggravated by employment.<sup>10</sup> Dr. Charles L. Walters submitted reports dated October 18, 1989 and

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<sup>5</sup> *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

<sup>6</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>10</sup> Dr. Pirela-Cruz also submitted a March 7, 1989 report in which he advised that appellant's condition was

October 29, 1991, in which he advised that appellant's preexisting cervical spondylosis with myelopathy was "substantially aggravated" by writing with her neck in a flexed position for many hours on November 17, 1988, noting that this caused a cervical strain. While Dr. Walters' reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As Dr. Walters indicated that appellant's cervical spondylosis with myelopathy was employment related, his opinion is sufficient to require further development of the record.<sup>11</sup> It is well established that proceedings under the Federal Employees' Compensation Act<sup>12</sup> are not adversarial in nature,<sup>13</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>14</sup> On remand, the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether her neck condition is causally related to the November 17, 1988 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated September 20, 1996 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.  
December 2, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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longstanding and did not think an injury at work caused the problem. The Board notes, however, that Dr. Pirela-Cruz did not identify what "condition" was "longstanding."

<sup>11</sup> See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation.

<sup>12</sup> 5 U.S.C. §§ 8101-8193.

<sup>13</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>14</sup> See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

A. Peter Kanjorski  
Alternate Member