

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, Md.

*Docket No. 97-907; Oral Argument Held April 7, 1998;
Issued June 3, 1998*

Appearances: *Alfred E. Davis*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained an aggravation of a preexisting low back condition causing disability commencing May 15 or August 17, 1992, causally related to the part-time light-duty work she performed between April 12 and August 17, 1992; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing following review of the written record by an Office hearing representative.

On August 28, 1976 appellant was hit in the back by a cash drawer. The Office accepted her claim; she had a short period of disability and she returned to full duty as a distribution clerk. Thereafter appellant filed several more claims for back injury, which were accepted by the Office and she had periods of total and partial disability. Effective February 9, 1987 a loss of wage-earning capacity determination was made by the Office for appellant's part-time duty 20 hours per week.

On July 23, 1987 while on modified duty appellant sustained a lumbar sprain, which was accepted by the Office. Appellant was totally disabled from this injury through September 1991 when she was offered another modified job. She claimed that this job increased her back pain and on October 11, 1991 she again became totally disabled. Appellant returned to work on February 1, 1992 in a modified position, but sustained an intervening hand injury, which disabled her from March 10 through April 11, 1992. She again returned to work on April 12, 1992 in another modified position, which required reaching above her shoulder and lifting. Appellant claimed that this increased her symptomatology and she became totally disabled again on May 15, 1992. Appellant returned to work in June 1992 in an assignment, which she alleged did not accommodate her medical restrictions, such that she again became totally disabled on August 17, 1992. Thereafter she did not return to work.

On November 2, 1995 appellant filed a claim alleging that her modified-duty assignment aggravated her preexisting back condition, causing her to become totally disabled on May 15, 1992 and again on August 17, 1992.

In support appellant submitted medical evidence pertaining to her hand condition and medical evidence predating her May 15, 1992 disability, none of which is probative to her back condition on and after May 15, 1992.

In a November 29, 1995 report from appellant's treating Board-certified family practitioner, Dr. John B. Theobalds, the physician noted that appellant had been under his care since 1982 for chronic lower back pain as a result of a 1976 work injury, reported her intervening medical history, indicated that various tests done in 1987 and 1994 showed abnormal findings and opined that had appellant been adequately treated in the acute phase of the injury, the problem she was now having would have been avoided. Dr. Theobalds opined that the combination of inadequate rest and exerted pressure at her job resulted in her absences and made her very difficult to manage. Dr. Theobalds stated that he obtained a modified job for appellant in February 1992 and that by May she was having so much discomfort that he was forced to take her off part-time duty and to recommend complete bed rest through June 17, 1992. Dr. Theobalds stated that after returning to work on light-duty status appellant again started missing work and he opined that "the condition of her back was aggravated by her duties at work." He reported that by mid-August appellant was having so much discomfort that he was again forced to take her off the part-time position and again recommend complete bed rest. No specifics regarding what work duties caused appellant's problems were included.

Appellant also submitted an April 23, 1996 Form CA-20 attending physician's report, which noted the history of injury, as "original injury occurred on August 28, 1976, aggravated injury to the same area on July 24, 1987, May 15 and August 17, 1992." He noted his findings as "aggravation of lower back pain due to prolong [sic] sitting, bending, stooping, lifting and reaching. Also prolong [sic] standing." Dr. Theobalds diagnosed "exacerbation of lower back pain from old injury," and checked "yes" to the question of whether he believed the condition found was caused or aggravated by an employment activity. He indicated that she was totally disabled from May 15 through June 17, 1992 and from August 17, 1992 through the present.

By decision dated May 20, 1996, the Office rejected appellant's claim finding that appellant failed to submit evidence sufficient to demonstrate that her claimed condition or disability was caused, precipitated, accelerated or aggravated by employment factors between April 12 and August 17, 1992.

Thereafter appellant requested a review of the written record by an Office hearing representative. She also submitted further medical evidence in support of her contentions.

A July 31, 1992 report from Dr. Alicia E. Hastings, a Board-certified general practitioner, noted that appellant was treated for a chronic pain condition resulting from an August 1976 work injury. Dr. Hastings reported appellant's current symptomatology, noted that following her 1976 injury she had not been able to work full time, indicated that appellant stated that her symptomatology had not resolved and diagnosed status post remote contusion with strain of the lumbosacral spine, myofascial pain syndrome secondary to the contusion and sprain, left lower

extremity myofascitis, rule out radiculopathy and rule out post-traumatic stress syndrome. The causal relationship of appellant's disability to her part-time limited duty between April 12 and August 17, 1992 was not discussed.

A January 31, 1994 report, from Dr. Hastings, discussed appellant's physical medicine management regimen since the July 31, 1992 report, detailed her physical examination results, which included the presence of a mild cervical muscle spasm at extremes of range of motion and opined that appellant's prognosis was unfavorable. Again the causal relationship of appellant's disability to her part-time limited duty between April 12 and August 17, 1992 was not addressed.

Appellant also resubmitted previously considered reports from Dr. Theobalds and copies of reports predating her May 15, 1992 disability.

By decision dated September 4, 1996, the Office hearing representative affirmed the May 20, 1996 decision, finding that the record was devoid of rationalized medical opinion evidence supporting that appellant's disability on May 15 or on August 17, 1992 was causally related to specific factors of her federal employment.

Thereafter appellant requested an oral argument before an Office hearing representative.

By decision dated December 23, 1996, the Chief of the Branch of Hearings and Review denied appellant's oral hearing request, noting that she had already received a review of the written record on the same issue and that, therefore, she was not, by right, entitled to another review by that branch. The branch chief further noted, however, that appellant's request had been carefully considered and had been denied for the reason that the issue in the case could equally well be addressed by requesting reconsideration from the Office and by submitting evidence not previously considered, which established that the claimed medical condition was causally related to her employment.

The Board finds that appellant has failed to establish that she sustained an aggravation of a preexisting low back condition causing disability commencing May 15 or August 17, 1992, causally related to the part-time light-duty work she performed between April 12 and August 17, 1992.

An award of compensation may not be based on surmise, conjecture, speculation, or on a claimant's unsupported belief of causal relationship.¹ Instead, appellant has the burden to present rationalized medical opinion evidence, based upon a complete factual and medical background, showing causal relation.² Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.³

¹ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Bruce E. Martin*, 35 ECAB 1090 (1984).

The medical evidence required to establish causal relation, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.⁴

In the instant case, appellant contends that she sustained a disabling low back condition solely as a result of the part-time light-duty work she performed on an intermittent basis between April 12 and August 17, 1992. In support of this claim appellant has submitted medical evidence, which establishes only the presence of low back pain. In both of her reports Dr. Hastings diagnosed myofascial pain syndrome, but did not discuss the causal relationship of appellant's low back pain symptoms to the part-time limited-duty work she performed between April 12 and August 17, 1992. As neither of Dr. Hastings' reports includes any opinion on causal relationship of appellant's condition, with specific factors of her employment between April 12 and August 17, 1992, they are insufficient to establish appellant's claim.

Also submitted was the November 29, 1995 report, from Dr. Theobalds, which merely stated that appellant experienced "discomfort" after she returned to part-time light-duty work and concluded that "the condition of her back was aggravated by her duties at work." The Board notes that this report is couched in very vague and general terms, is conclusory and lacks any medical rationale explaining how appellant's disability for work was caused by specific factors or incidents of her light-duty employment. The opinion of a physician supporting causal relation must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to identified factors of the employee's federal employment and such opinion on causal relation must be supported with affirmative evidence, be explained by medical rationale and be based on a complete and accurate factual and medical background.⁵ Accordingly, Dr. Theobalds' 1995 report is unrationalized and of little probative value to establish causal relation.⁶

Appellant also submitted the 1996 form report, in which Dr. Theobalds diagnosed "exacerbation of lower back pain from old injury" and attributed the diagnosis, by checking "yes," to appellant's part-time limited-duty work. However, no further explanation was provided. The Board has held that an opinion on causal relation, which consists only of a physician checking "yes" to a form report question on causal relation, without further explanation, is of little probative value and is insufficient to support a claim for compensation.⁷ The Board finds that this form report is insufficient to establish a causal relation between

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

⁵ *See Philip J. Deroo*, 39 ECAB 1294 (1988).

⁶ *See Lillian M. Jones*, 34 ECAB 379 (1982).

⁷ *See Donald W. Long*, 41 ECAB 142 (1989).

appellant's claimed disability and factors of her federal employment. The remainder of the medical evidence of record is either irrelevant to appellant's claim for aggravation of a low back condition or is silent on the issue of causal relation and is of diminished probative value. Accordingly, the Board finds that appellant has failed to submit the rationalized medical evidence necessary to establish her aggravation claim and has, therefore, failed to meet her burden of proof.

With respect to the second issue, section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant not satisfied with a decision of the Office is entitled, upon timely request, to a hearing before a representative of the Office. Pursuant to 20 C.F.R. § 10.131(a) and (b), a claimant may choose to exercise this statutory right by requesting either an "oral hearing" or a "review of the written record." However, once an Office hearing representative has issued a decision after conducting a review of the written record, a claimant is not entitled to a subsequent oral hearing.⁸

The evidence of record indicates that on June 17, 1996 appellant disagreed with the May 20, 1996 decision and made a timely request for an oral hearing before an Office hearing representative. On August 11, 1996 appellant elected to change her request to a review of the written record by an Office hearing representative in accordance with 20 C.F.R. § 10.131(a). The hearing representative thereafter undertook a review of the written record and issued a September 3, 1996 decision, that was finalized on September 4, 1996. By letter dated October 17, 1996, appellant's representative subsequently requested an oral hearing before an Office hearing representative. The Board finds that because the Office provided a review of the written record on her claim under section 8124(b), prior to her representative's request for an oral hearing, appellant is not entitled, by right, to a subsequent oral hearing on the same issue.⁹ The Office noted that the issue in question could be equally well addressed by submitting a request for reconsideration to the Office and by providing evidence not previously considered, which established that her claimed disabling condition was causally related to specific incidents of her employment between April 12 and August 17, 1992. The Board finds that the Office properly exercised its discretionary authority under the circumstances of this case.

⁸ *Richard F. Hines*, 39 ECAB 1431 (1988).

⁹ *Id.*

The decisions of the Office of Workers' Compensation Programs dated December 23, September 4 and May 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member