

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS SAMS and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Cincinnati, OH

*Docket No. 01-245; Submitted on the Record;  
Issued October 11, 2001*

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DECISION and ORDER

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

The issues are: (1) whether appellant established her burden of proof that she sustained a lower back injury causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs, in its September 9, 2000 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On November 17, 1998 appellant, then a 48-year-old mail processor, filed a notice of traumatic injury, alleging that on November 12, 1998 she picked up a tray of mail and pulled her back muscle.<sup>1</sup>

In a letter dated December 16, 1998, the Office requested that appellant submit medical information to support her claim. No new information was submitted.

By decision dated January 13, 1999, the Office denied appellant's claim, as the evidence of record did not establish fact of injury.

On January 26, 1999 appellant submitted duty status reports from Dr. Dyatra Mitchell, a Board-certified internist, diagnosing appellant with back pain, right leg numbness and right leg pain and indicating that appellant should work a 10-hour shift or less. He also diagnosed appellant with herniated lumbar disc. Appellant eventually began working light duty.

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<sup>1</sup> Appellant also filed an occupational disease claim on that same day (case # 90446908), listing her date of injury as September 10, 1998. Her claim was accepted for low back strain. The Office also accepted her claims for recurrence of disability on March 9, April 17 and September 3, 1999 and June 24, 2000. Appellant requested reconsideration, but the Office informed her that she had not been denied anything. The traumatic injury claim (90446907) and the occupational disease claim (90446908) were combined on August 27, 1999. The record is unclear but seems to indicate that appellant is only appealing her traumatic injury claim. The Board notes that it lacks jurisdiction to review the Office's decisions under the occupational disease claim, since more than one year has elapsed between the Office's last merit decision and the date appellant filed her appeal with the Board. 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Appellant also submitted a November 5, 1998 magnetic resonance imaging (MRI) report, which indicated disc herniation at the L2-3 levels and central canal stenosis at the L3-4 and L4-5 levels.

By letter dated January 21, 1999, appellant requested a review of the written record.

By decision dated August 17, 1999, the hearing representative affirmed the Office's January 13, 1999 decision.

By letter dated January 4, 2000, appellant requested reconsideration.<sup>2</sup> She submitted a copy of her January 21, 1999 request for review of the written record, a copy of her limited-duty job assignment and a duty status report dated November 3, 1998, a copy of her CA-1, the MRI report dated November 5, 1998, an x-ray report dated October 19, 1998 and several reports from Dr. Crystl D. Willison.

In a merit decision dated March 1, 2000, the Office denied modification of the previous decision.<sup>3</sup>

By letter dated August 12, 2000, appellant requested reconsideration. She submitted a supplemental report from Dr. Willison dated April 28, 2000, a narrative report from Dr. Willison dated August 4, 2000 and a copy of her medical transcript dated September 22, 1999.

In a nonmerit decision dated September 7, 2000, the Office denied appellant's request for reconsideration.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a lower back injury causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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<sup>2</sup> Appellant indicated that she believed her November 12, 1998 incident was a recurrence of her original September 10, 1998 injury.

<sup>3</sup> The Office noted that appellant's November 12, 1998 incident was a new injury and not a recurrence.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>9</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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. 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>10</sup>

The Board finds that the medical reports submitted by appellant do not contain a well-rationalized medical opinion relating her lower back condition to her employment.

A few reports from Dr. Mitchell attempt to address the causal relationship between appellant’s injury and her employment factors, yet they are dated before November 12, 1998, the date of appellant’s alleged traumatic injury. Dr. Mitchell’s reports dated September 14 and November 2, 1998 indicate that, at that point appellant had already had persistent back pain for approximately four to six weeks.

Dr. Willison’s report dated November 11, 1999 also indicates that appellant had been complaining of low back pain with right leg numbness since September 1998 while working at the employing establishment which required fairly heavy lifting on a repetitive daily basis. This report, however, does not mention any specific lifting incidents from November 1998 and only seems to address appellant’s general occupational complaints.

Also, in an August 4, 2000 report, from Dr. Willison, she indicates that she first treated appellant on January 7, 1999. The report relays appellant’s complaints that in September 1998, “while at work lifting and twisting, she experienced onset of severe low back pain which she rated 9/10, even with sitting.” Even though Dr. Willison’s report does hint at a specific lifting incident at work, it creates inconsistencies with appellant’s claim that she experienced her

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<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

<sup>9</sup> As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>10</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

traumatic injury on November 12, 1998. In addition, Dr. Willison does not provide a fully rationalized medical opinion of how appellant's lifting and twisting incident caused the onset of her lower back pain.

Since the medical evidence submitted does not establish a causal relationship between appellant's November 12, 1998 lifting incident and her employment, appellant has not met her burden of proof in establishing her claim.

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>11</sup>

In support of her August 12, 2000 request for reconsideration, appellant submitted a copy of her medical transcript dated September 22, 1999, a supplemental report from Dr. Willison dated April 28, 2000 and a narrative report from Dr. Willison dated August 4, 2000.

The relevant issue is whether appellant has established that she sustained a traumatic injury on November 12, 1998.

The evidence submitted by appellant in support of her request for reconsideration is cumulative or duplicate evidence that does not address her November 12, 1998 injury. The September 22, 1999 medical transcript is duplicative evidence already contained in the record. Dr. Willison's supplemental report dated April 28, 2000 is also already contained in the record under claim No. 9466908 and is not relevant to appellant's claim for reconsideration. In addition, the August 4, 2000 narrative report by Dr. Willison is also cumulative evidence in that she reiterates that appellant experienced a sudden onset of pain while she was lifting mail at work, but does not diagnose a specific condition in connection with the incident. This evidence is deemed insufficient to reopen appellant's claim for merit review as it is cumulative information already contained in the file.

As appellant's August 12, 2000 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

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<sup>11</sup> 20 C.F.R. § 10.606(b)(2).

The September 7 and March 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 11, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member