United States Department of Labor
Employees' Compensation Appeals Board

NORITA L. KOOB, Appellant	)	
and	)	**Docket No. 03-2065**
	)	**Issued: December 17, 2004**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Camp Lejeune, NC, Employer	)	

Appearances:
Ernest J. Wright, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 18, 2003 appellant timely filed an appeal from a May 8, 2003 decision by the Office of Workers' Compensation Programs which denied her request for reconsideration of a January 29, 2003 decision, which denied her claim finding that she had not sustained an injury on September 25, 2000. The Board has jurisdiction over the merits and the nonmerit decisions of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty as alleged; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On September 25, 2000 appellant, then a 52-year-old cashier, was directing a line at the employing establishment when she saw a small girl without shoes nearly struck by a shopping cart wheel. Appellant stated that the girl's foot was near the wheel of a shopping cart. Appellant

jerked the cart with her right arm to prevent any harm to the girl. Appellant filed a traumatic injury claim on September 28, 2000 for her neck and shoulder.

Appellant submitted a September 25, 2000 admission note from J. Georgette Dougherty, a registered nurse, who gave a history of the injury consistent with appellant's account. Ms. Dougherty stated that appellant complained of pain in the neck and shoulder which she placed at a level 2 on a scale from 0 to 10. Appellant also submitted a report from G.V. Jones, a nurse, who indicated that appellant had strains of the right trapezius muscle and cervical region, and provided instructions on how to care for these conditions.

In an October 18, 2000 report, Dr. Robert E. Abraham, a Board-certified neurosurgeon, indicated that appellant had a four-year history of neck pain. He related that appellant had struck her arm and shoulder on a register. She experienced pain from the mid trapezius area down the fingers on the right side with movement of the neck, and pain and numbness in the upper arm and forearm in the medial aspect with occasional burning. Appellant also had weakness in the right hand and frequently dropped objects. On examination, Dr. Abraham stated that appellant had moderate muscle spasms in the paraspinal and trapezius regions, with mild tenderness in the right trapezius, medial scapular border and mid paraspinal regions. He diagnosed right cervical radiculopathy and ordered tests to rule out right ulnar neuropathy.

In an April 26, 2001 report, Dr. Clarence Ballenger, a Board-certified neurologist, indicated that appellant complained of pain in the right elbow near the ulnar groove and numbness in her thumb and index finger. He commented that appellant had no real neck pain and only occasional slight shoulder pain. An electromyogram of selected muscles of the right arm was completely unremarkable. He noted that a previous study on September 8, 1989 was also unremarkable.

In an October 26, 2001 note, Dr. Abraham stated that appellant could not lift any weight. He stated that appellant could work as a customer service representative with no working on the register, and no pulling, twisting, grabbing or pushing carts. He added that appellant should not work in cold environments.

Appellant went on leave without pay from January 10 to 21, 2002. On June 11, 2002 she filed a claim for compensation (Form CA-1) for the period she did not work. Appellant also related that on February 2, 2001 she was talking with a customer when another customer walked by and bumped into her right arm.

In an unsigned November 6, 2002 report, a physician indicated that appellant complained of pain in the right shoulder, arm, elbow, hand and neck, and that appellant related her problems to an employment injury on January 11, 1997 when she bent down to pick up something and hit her right arm on a cash register as she was rising. The physician stated that appellant had a myriad of symptoms of unclear etiology. He commented that there seemed to be a cervical component which was difficult to relate to the initial injury. Appellant also seemed to have a component of rotator cuff dysfunction which could be related to her initial injury.

In a January 29, 2003 decision, the Office denied appellant's claim for compensation on the grounds that, while the evidence of record showed that the claimed event occurred, there was insufficient medical evidence that provided a diagnosis which could be connected to the event.

On April 29, 2003 appellant requested reconsideration. She submitted evidence that was previously of record. In a May 8, 2003 decision, the Office denied appellant's request for reconsideration on the grounds that she had not raised substantive legal questions or included new and relevant evidence in support of her request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational injury.[1]

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. 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.[2] 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. A claimant seeking benefits under the Act[3] has the burden of establishing by reliable, probative and substantial evidence that any disability for work or specific condition for which compensation is claimed is causally related to the employment injury.[4] To establish causal relationship between a condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of

[1] *Calvin E. King*, 51 ECAB 394, 400 (2000).

[2] For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

[3] 5 U.S.C. § 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.[6]

ANALYSIS -- ISSUE 1

The Office found that the event on September 25, 2000 occurred as alleged that appellant prevented a cart from striking a child. The medical evidence submitted by appellant, however, does not establish a causal relationship between the event and her neck and right arm complaints. The notes submitted by nurses shortly after the September 25, 2000 incident are not probative medical evidence because a nurse is not defined as a physician under section 8101(2) of the Act.[7] Therefore, these reports are not sufficient to establish the claim.[8] The unsigned November 6, 2002 report cannot be considered medical evidence because, to constitute competent medical opinion evidence, the report must be signed by a qualified physician.[9] The only competent medical evidence of record are the reports of Dr. Abraham and the report of Dr. Ballenger. On October 18, 2000 Dr. Abraham provided only a history that appellant had neck pain for four years after striking her right shoulder on a cash register. He did not mention the September 25, 2000 incident as alleged by appellant. Dr. Abraham stated that appellant had numbness extending down the right arm. He diagnosed cervical radiculopathy and ordered tests to rule out ulnar neuropathy. Dr. Abraham did not provide any opinion on the cause of appellant's cervical radiculopathy and did not relate the condition to any incident of her federal employment, specifically the September 25, 2000 incident. Dr. Ballenger noted appellant's complaints of pain in the neck and right arm but reported that an electromyogram and nerve conduction studies were unremarkable. Appellant has not submitted any medical evidence that shows a causal relationship between the September 25, 2000 incident at work and her subsequent neck and right arm conditions.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[10] Evidence that repeats or duplicates evidence already in the case record has no

[6] 20 C.F.R. § 10.115(e).

[7] 5 U.S.C. § 8101(2).

[8] *Vicky L. Hannis*, 48 ECAB 538, 540 (1997).

[9] *Vicky C. Randall*, 51 ECAB 357, 360-61 (2000).

[10] 20 C.F.R. § 10.608(b).

evidentiary value and does not constitute a basis for reopening a case.[11] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[12]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant submitted medical evidence that was of record and considered by the Office prior to the January 29, 2003 decision. She did not submit any new, relevant medical evidence that would establish an injury causally related to the September 25, 2000 incident. Her attorney did not present any new legal arguments in support of her request for reconsideration. Appellant, therefore, did not meet any of the requirements of section 10.606 in requesting reconsideration. Under section 10.608, she is not entitled to reconsideration of the merits of the case.

CONCLUSION

Appellant did not meet her burden of proof in establishing that the September 25, 2000 incident was causally related to her neck and right arm pain or caused an injury. The evidence submitted by appellant with her request for reconsideration did not meet the requirements set forth in the regulations that would require the Office to further consider the merits of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated May 8 and January 29, 2003, are affirmed.

Issued: December 17, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] *John Polito*, 50 ECAB 347, 351 (1999).

[12] *David J. McDonald*, 50 ECAB 185, 189-90 (1998).