# United States Department of Labor
# Employees' Compensation Appeals Board

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| **KATRINA D. HYMON, Appellant** | ) | |
| | ) | **Docket No. 04-1788** |
| **and** | ) | **Issued: November 10, 2004** |
| **U.S. POSTAL SERVICE, INTERNATIONAL SERVICE CENTER, Chicago, IL Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

### ***JURISDICTION***

On July 7, 2004 appellant, through her attorney, filed a timely appeal from a July 28, 2003 merit decision of the Office of Workers' Compensation Programs, denying her occupational disease claim. She also appealed a nonmerit decision of the Office dated June 10, 2004 denying her request for reconsideration under 5 U.S.C. § 8128. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the June 10, 2004 nonmerit decision.

### ***ISSUES***

The issues are: (1) whether appellant has established that she sustained a back condition causally related to factors of her federal employment; and (2) whether the Office properly denied appellant's request for merit review of her claim pursuant to 5 U.S.C. § 8128(a).

### ***FACTUAL HISTORY***

On April 3, 2003 appellant, then a 35-year-old former mail handler, filed an occupational disease claim alleging that on December 14, 2000 she realized that she had chronic low back pain which she attributed to "excessive bending [and] standing in one place" in the performance

of duty. She related that her work required lifting bags that weighed up to 70 pounds. On the reverse side of the claim form a supervisor with the employing establishment indicated that appellant was removed from service on August 1, 2001 due to her physical inability to meet the requirements of her position.

In a statement dated April 30, 2003, an official with the employing establishment related that appellant had nonemployment-related motor vehicle accidents in 1991 and 1993. He stated, "She has been on light duty for back problems since 1991 for the car accident, 1993 for a car accident and 1996 through the date of her removal."[1]

Medical evidence accompanying appellant's claim supports that she had work restrictions in 1991, 1993 and 1996 onward. In a report dated February 25, 1991, Dr. Jacob Bernstein, who specializes in general practice, diagnosed a left knee contusion and acute lumbar, paralumbar and lumbosacral strain due to a January 16, 1991 accident. The record further contains medical notes outlining work restrictions dated December 28, 1993 to November 6, 2000.

In a fitness-for-duty report dated December 14, 2000, a physician noted appellant's history of injuries, including a low back injury sustained at the employing establishment five years prior.[2] He listed work restrictions.

The record contains an October 9, 2002 arbitration decision upholding appellant's separation from the employing establishment because she was unable to perform her employment due to restrictions from a 1993 nonemployment-related accident. The record also includes an incomplete claim for compensation on account of traumatic injury, Form CA-1, in which appellant alleged that she pulled a muscle in her back on September 15, 1989.[3]

In a letter dated June 2, 2003, the Office provided appellant 30 days to submit additional information in support of her claim, including a detailed medical report from her attending physician addressing her diagnosed condition and its relationship to her federal employment.

Appellant did not respond within the time allotted.

By decision dated July 29, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her claimed medical condition was due to her employment. The Office noted that appellant had not submitted a medical opinion addressing causal relationship and stated, "Based on these findings, the claim is denied because it is not established that the claimed medical condition is related to the established work-related event(s)."

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[1] The official challenged appellant's statement that she lifted sacks weighing up to 70 pounds and noted that her restrictions since 1996 prohibited lifting over 15 pounds.

[2] The name of the physician is not legible.

[3] The record also contains an incomplete Form CA-1 dated February 11, 1999 in which appellant alleged that she injured her right knee.

In a letter received by the Office on February 16, 2004, appellant requested reconsideration of her claim. She noted that an Office claims examiner informed her that she had more than one claim filed. Appellant stated:

> "The back injury occurred in 1989 but it was never filed by the [employing establishment] until fourteen years later. The reason ther[e] is a legal question being raised is because the [employing establishment] removed me for inability to perform the function of my position because of injury (back)…. At the time of my removal the [employing establishment] informed me that I would not longer be employed because there was no legal claim that the back injury happened at the [employing establishment]…. So I [am] requesting reconsideration based on the fact that the [employing establishment] withheld information regarding a government document that they contended that it did not exist when in fact it did."

In a decision dated June 10, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the prior merit decision.

## ***LEGAL PRECEDENT -- ISSUE 1***

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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; that an injury was sustained while 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.[5] 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 disease.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[7] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[8] and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Irene St. John*, 50 EAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

[7] *Solomon Polen*, 51 ECAB 341 (2000).

[8] *Marlon Vera*, 54 ECAB ___ (Docket No. 03-907, issued September 29, 2003); *Roger Williams*, 52 ECAB 468 (2001).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[9]

The medical evidence required to establish causal relationship generally 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.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

## ***ANALYSIS -- ISSUE 1***

In this case, appellant alleged that her federal duties caused a low back condition. The Office found that she had not submitted sufficient medical evidence to establish that she sustained an employment-related back condition due to the established employment factors.

In a report dated February 25, 1991, Dr. Bernstein noted that appellant was in an accident on January 16, 1991 and diagnosed a left knee contusion and acute lumbar, paralumbar and lumbosacral strain. He did not, however, discuss whether the 1991 accident was work related. Additionally, Dr. Bernstein's report dated nearly 10 years prior to appellant's filing of her occupational disease claim, is of little relevance to the current issue of whether factors of her federal employment caused a chronic low back condition.

Appellant also submitted medical notes dated 1993 to 2000 which contained work restrictions and work releases; however, none of this evidence contains a diagnosis, findings on examination or a physician's opinion regarding causal relationship. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] Moreover, findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.[15]

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[9] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[10] *Conrad Hightower*, 54 ECAB ___ (Docket No. 02-1568, issued September 9, 2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Tomas Martinez*, 54 ECAB ___ (Docket No. 03-396, issued June 16, 2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

[13] *Judy C. Rogers*, 54 ECAB ___ (Docket No. 03-565, issued July 9, 2003).

[14] *Michael E. Smith*, 50 ECAB 313 (1999).

[15] *Barry C. Petterson*, 52 ECAB 120 (2000).

In a fitness-for-duty report dated December 14, 2000, a physician discussed appellant's history of injuries, including a low back injury five years prior at the employing establishment. He listed work restrictions. The physician did not, however, attribute appellant's restrictions to her prior alleged employment injury or any factors of her federal employment and thus, his opinion is of diminished probative value.[16]

The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. 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 her claimed condition and her employment.[17] To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[18] Appellant failed to submit such evidence and, therefore, failed to discharge her burden of proof.

## ***LEGAL PRECEDENT -- ISSUE 2***

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[19] the Office's regulation 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) constitute relevant and pertinent new evidence not previously considered by the Office.[20] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[21] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[22]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[23] The Board has held that the submission of evidence which does not address the particular issue involved does not

[16] *See Michael E. Smith*, *supra* note 14.

[17] *Patricia J. Glenn*, 53 ECAB ___ (Docket No. 01-65, issued October 12, 2001).

[18] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

[19] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[20] 20 C.F.R. § 10.606(b)(2).

[21] 20 C.F.R. § 10.607(a).

[22] 20 C.F.R. § 10.608(b).

[23] *Arlesa Gibbs*, 53 ECAB ___ (Docket No. 01-113, issued November 2, 2001); *James E. Norris*, 52 ECAB 93 (2000).

constitute a basis for reopening a case.[24] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[25]

## ***ANALYSIS -- ISSUE 2***

The Office denied appellant's occupational disease claim because she did not submit medical evidence establishing that she had a low back condition due to factors of her federal employment. The relevant issue in this case is, therefore, medical in nature and can only be resolved through the submission of relevant medical evidence.[26] Appellant, however, did not submit any medical evidence with her request for reconsideration.

Appellant, in her request for reconsideration, argued that the employing establishment wrongfully failed to file a traumatic injury claim for 14 years. She did not, however, point out any error by the Office in its application of the law in her workers' compensation claim or advance a legal argument relevant under the Act. Instead, she argued error by the employing establishment in withholding her claim form and dismissing her from employment. The Office's jurisdiction is limited to administering benefits under the Act.[27] Appellant's argument, consequently, does not have a reasonable color of validity sufficient to warrant a reopening of her claim for merit review.[28]

Appellant did not submit relevant evidence not previously considered with her request for reconsideration. She further failed to raise a substantive legal question or show that the Office erroneously applied or interpreted a specific point of law. Thus, the Office properly refused to reopen her claim for further review of the merits.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish that she sustained a low back condition causally related to factors of her federal employment. The Board further finds that the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to section 8128(a).

[24] *Ronald A. Eldridge*, 53 ECAB ___ (Docket No. 01-67, issued November 14, 2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[25] *Vincent Holmes*, 53 ECAB ___ (Docket No. 00-2644, issued March 27, 2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[26] *Ronald M. Cokes*, 46 ECAB 967 (1995).

[27] *Sara Schepper*, 27 ECAB 180 (1975).

[28] *See Robert P. Mitchell*, *supra* note 25.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 10, 2004 and July 28, 2003 are affirmed.

Issued: November 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member