

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

BERTHA M. WALKER, Appellant

and

**DEPARTMENT OF THE NAVY,
U.S. NAVAL HOME, Gulfport, MS,
Employer**

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**Docket No. 04-1511
Issued: January 27, 2005**

Appearances:
Bertha M. Walker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On May 19, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 18, 2004, denying her claim that she sustained an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an employment-related injury in the performance of duty.

FACTUAL HISTORY

On October 22, 2002 appellant, then a 39-year-old physical therapy assistant, filed an occupational disease claim alleging that she sustained injury to her neck, left upper extremity and upper back due to lifting, repositioning and transferring patients and helping them to perform

stretching exercises.¹ She indicated that she first became aware of her condition on October 10, 2002 and that she first realized its relation to her work on October 14, 2002. Appellant stopped work on October 11, 2002 and returned to work in October 18, 2002 in a light-duty position which did not require use of her left upper extremity.

Appellant submitted medical evidence from October and November 2002 in support of her claim, including several notes of Dr. Stephen W. McAuliffe, an attending osteopath. In a note dated November 4, 2002, he indicated that appellant had a left C5 radiculopathy and stated, "This injury could be work related."² Several of the notes indicated that appellant could not work or could only perform light-duty work, but they did not identify the cause of the disability. In a form report dated November 19, 2002, Dr. McAuliffe listed the date of injury as October 10, 2002 and indicated that appellant reported pain in the left side of her neck and pain, tingling and numbness in her left upper extremity. He diagnosed "cervical radiculopathy" in Block 7 of the form³ and wrote "unknown" in response to a question in Block 8 asking whether the found condition was caused or aggravated by an employment activity. Dr. McAuliffe noted that appellant was able to resume light-duty work beginning October 21, 2002.⁴

By decision dated April 8, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty.

In May 2003, appellant requested reconsideration of her claim. In support of her request, appellant submitted an altered version of the previously submitted November 19, 2002 form report of Dr. McAuliffe. Under Block 7, the diagnosis "cervical radiculopathy" was written in handwriting which differed from that of the November 19, 2002 report with the additional notation "Hf, Dr. McAuliffe's Office." In response to the question in Block 8, asking whether the found condition was caused or aggravated by an employment activity, the form now contained a box marked "yes" with the additional notation, "Yes, it was caused or aggravated by an employment activity -- Hf Dr. McAuliffe's Office." The report continued to indicate that appellant was able to resume light-duty work beginning October 21, 2002. In a note dated May 1, 2003, Dr. McAuliffe stated, "In Block 7, the diagnosis is supposed to read cervical radiculopathy. In Block 8, the condition was caused or aggravated by an employment activity."

¹ Appellant submitted documents which detailed the tasks she performed throughout the day with various patients at the employing establishment, including helping them with stretching exercises. She also submitted a traumatic injury claim form in which she alleged that she sustained a left knee injury on November 28, 2000. This claim bears no relation to the present case.

² The record contains the findings of a nerve conduction study obtained on October 29, 2002 which revealed that appellant had a possible left C6 root irritation.

³ The word "unknown" with a line through it appeared next to the phrase "cervical radiculopathy."

⁴ In a report dated March 24, 2004, Dr. Howard A. McMahan, an attending Board-certified orthopedic surgeon, indicated that diagnostic testing showed that appellant had a surgical fusion at S1 to L3 as well as significant degenerative disc disease of the lumbar spine. This evidence is not relevant to the present claim which involves claimed injury to the neck, left upper extremity and upper back.

By decision dated February 18, 2004, the Office affirmed its April 8, 2003 decision finding that the additional evidence of Dr. McAuliffe was not sufficiently well rationalized to establish appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of 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 specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for 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. 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.⁸

ANALYSIS

In support of her claim that she sustained an employment-related injury, appellant submitted a November 19, 2002 form report in which Dr. McAuliffe, an attending osteopath, listed the date of injury as October 10, 2002 and indicated that appellant reported pain in the left side of her neck and pain, tingling and numbness in her left upper extremity. He diagnosed "cervical radiculopathy" in Block 7 of the form and wrote, "unknown" in response to a question

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

in Block 8 asking whether the found condition was caused or aggravated by an employment activity.⁹ Appellant later submitted documents in which Dr. McAuliffe indicated that he wished to alter portions of the November 19, 2002 report. In a note dated May 1, 2003, he indicated that appellant's diagnosis should remain "cervical radiculopathy" but that the question asking whether the found condition was caused or aggravated by an employment activity should be answered in the affirmative.¹⁰

Although it appears that Dr. McAuliffe has provided an opinion that appellant had a cervical radiculopathy which was caused or aggravated by employment factors, his opinion is of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his conclusion on causal relationship.¹¹ He did not provide any description of the medical process through which the implicated employment factors could have been responsible for appellant's claimed medical condition. Moreover, Dr. McAuliffe's opinion is not based on a complete and accurate factual and medical history.¹² Appellant claimed that her condition was caused by various work activities, including lifting, repositioning and transferring patients and helping them to perform stretching exercises. However, Dr. McAuliffe did not provide any description of these implicated employment factors, nor did he provide a history of appellant's medical treatment or any notable findings on examination.

The record also contains a November 4, 2002 note in which Dr. McAuliffe indicated that appellant had a left C5 radiculopathy and stated, "This injury could be work related." This report is of limited probative value on the relevant issue of the present case in that it contains an opinion on causal relationship which is speculative in nature.¹³ A few other notes of attending physicians, dated in October and November 2002, indicated that appellant could not work or could only perform light-duty work, but these notes did not contain any opinion on the cause of the disability.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty.

⁹ Dr. McAuliffe noted that appellant was able to resume light-duty work beginning October 21, 2002.

¹⁰ The record contains a copy of the November 19, 2002 report that had alterations, which comported with the directions in Dr. McAuliffe's May 1, 2003 note. Although he did not alter the November 19, 2002 report himself, it appears that the changes were made at his direction.

¹¹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

¹³ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is speculative is of limited probative value regarding the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member