

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA D. BOLES and U.S. POSTAL SERVICE,  
POST OFFICE, Coalinga, CA

*Docket No. 98-2519; Submitted on the Record;  
Issued August 23, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant's left shoulder or neck conditions are causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 22 and March 18, 1998 requests for reconsideration.

On August 13, 1996 appellant, a distribution and window clerk, filed a claim asserting that her left shoulder and neck conditions were causally related to the duties she performed in her federal employment. The Office advised appellant to provide a comprehensive medical report from her treating physician providing, among other things, the physician's reasoned opinion on what caused her conditions. Specifically, the Office advised that if her physician felt that factors or incidents in her federal employment contributed to her conditions, the physician should provide an explanation for his opinion.

In a decision dated December 3, 1996, the Office denied appellant's claim on the grounds that she failed to establish the element of causal relationship. The Office noted that none of the medical evidence submitted by appellant contained an opinion on the cause and effect relationship between her work activities and the claimed medical conditions.

On December 27, 1996 appellant requested reconsideration. In support thereof she submitted a December 17, 1996 report from Dr. Paul Griffin, a Board-certified family practitioner. Dr. Griffin related appellant's symptoms, test results and treatment. After releasing appellant to perform limited duties, he stated: "We do expect with the chronic degenerative changes of the cervical spine that any increase in physical activity to a more strenuous type of heavy lifting, bending, frequent rotation of cervical spine could lead to exacerbation of her condition. The repeated lifting of heavy objects would aggravate the situation."

In a decision dated January 14, 1997, the Office denied a merit review of appellant's claim on the grounds that Dr. Griffin provided no medical opinion on the relationship of

appellant's medical conditions and that his report was, therefore, immaterial to the issue of causal relationship.

Appellant again requested reconsideration on November 9, 1997. She submitted an October 28, 1997 report from Dr. Griffin who stated, as follows:

"I have known and followed [appellant] now for over two years in the context of chronic degenerative changes of the cervical spine with documented x-ray findings. She has been seen in consultation by Dr. Brian Cla[gue,] a neurosurgeon. I have seen her monthly and have monitored her care.

"I have reviewed her file and examined her.

"At this point we can come to the conclusion that her cervical disc disease is related to her occupation and certainly would have been aggravated by physical exertion and lifting of the usual weight that she handles in her normal occupation. Her condition may have been caused by this physical activity. At the very least her profession or job did contribute to the advancement and progress in deterioration of the cervical disc disease."

On January 13, 1998 the Office issued a decision denying appellant's request for a review of the merits of her claim. The Office found that Dr. Griffin failed to provide a detailed history or knowledge of the factors of employment identified by appellant as having caused or contributed to her cervical condition. The Office further found that Dr. Griffin failed to provide his detailed reasons for relating the claimant's condition to the identified factors.

On January 13, 1998 the same day as the Office's decision, appellant submitted a December 18, 1997 report from Dr. Brian H. Clague, a neurosurgeon. Appellant subsequently asked for reconsideration on January 22, 1998 based on the report from Dr. Clague.

In a decision dated February 6, 1998, the Office found that appellant's January 13, 1998 request for reconsideration was untimely as it was filed more than one year after the Office's December 3, 1996 decision denying her claim. The Office denied appellant's request on the grounds that it failed to present clear evidence that the Office's final merit decision was erroneous.

On March 18, 1998 appellant again requested reconsideration and submitted in support thereof a March 6, 1998 report from Dr. Griffin.

In a decision dated April 21, 1998, the Office found that appellant's March 18, 1998 request for reconsideration was untimely as it was filed more than one year after the Office's December 3, 1996 decision denying her claim. The Office denied appellant's request because it failed to present clear evidence that the Office's final merit decision was erroneous.

An appeal to the Board must be filed no later than one year from the date of the Office's final decision.<sup>1</sup> Because appellant filed her appeal on June 29, 1998, the Board has no jurisdiction to review the Office decisions of December 3, 1996 and January 14, 1997. The only decisions that the Board may review are the decisions of January 13, February 6 and April 21, 1998.

With respect to the Office's January 13, 1998 decision, the Board finds that the Office actually conducted a merit review of appellant's claim. Although the Office denied appellant's November 9, 1997 request for reconsideration in the form of a nonmerit decision, the Office explained what medical evidence was necessary to establish the element of causal relationship. It then found that Dr. Griffin failed to provide a detailed history or knowledge of the factors of employment identified by appellant as having caused or contributed to her cervical condition and that he failed to provide his detailed reasons for relating the claimant's condition to the identified factors. In making these findings, the Office based its decision on the probative value and evidentiary weighing of Dr. Griffin's medical opinion and, thereby, reviewed the merits of appellant's claim. For this reason, the first issue on appeal is whether appellant's left shoulder or neck conditions are causally related to her federal employment. The Board will then address the issue pertaining to the February 6 and April 21, 1998 denial of appellant's requests for reconsideration.

The Board finds that the evidence fails to establish that appellant's left shoulder or neck conditions are causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Appellant attributed her condition to the duties she performed in her federal employment. The Office does not dispute the duties or the physical requirements of her position as a distribution and window clerk and for this reason the Board finds that appellant has established that she experienced the alleged work duties at the time, place and in the manner alleged. The question for determination is whether appellant's work duties or the physical requirements of her position caused or contributed to the claimed medical condition.

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<sup>1</sup> 20 C.F.R. § 501.3(d) (time for filing); *see id.* at § 501.10(d)(2) (computation of time).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

Causal relationship is a medical issue,<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

In his December 17, 1996 report, Dr. Griffin did not relate the chronic degenerative changes of appellant's cervical spine to the duties she performed as a distribution and window clerk. Rather, he cautioned that any increase in physical activity to a more strenuous type of heavy lifting, bending, or frequent rotation of cervical spine could lead to an exacerbation of appellant's condition. Dr. Griffin added that repeated lifting of heavy objects would aggravate the situation. Because this report does not offer a rationalized opinion on causal relationship, it is of diminished probative value.

In his October 28, 1997 report, Dr. Griffin associated appellant's diagnosed condition to her occupation. He noted that he had followed appellant for two years, that he had reviewed her file and had examined her. Dr. Griffin stated that he had come to the conclusion that appellant's cervical disc disease was related to her occupation and "certainly would have been aggravated by physical exertion and lifting of the usual weight that she handles in her normal occupation." His opinion is speculative, however, in that he noted that appellant's condition "may have been caused" by her physical activity. While this report generally supports appellant's claim, it is of diminished probative value. Dr. Griffin did not address the specific work duties appellant performed as a distribution and window clerk or the physical requirements of this position. He did not identify appellant's position and his brief references to her duties are vague. Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>8</sup> Although Dr. Griffin associated appellant's condition to her occupation, he failed to adequately explain how he arrived at his conclusion. As mentioned above, to establish the element of causal relationship the opinion of the physician must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. Dr. Griffin provided insufficient rationale for his stated conclusion. Medical conclusions unsupported by rationale are of little probative value.<sup>9</sup>

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<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); *see generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>9</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

Because the opinion Dr. Griffin provided in his October 28, 1997 report is of diminished probative value it is insufficient to establish the element of causal relationship. The Board will affirm the Office's merit decision of January 13, 1998.

The Board finds, however, that the Office abused its discretion in denying appellant's January 22 and March 18, 1998 requests for reconsideration.

In denying appellant's January 22 and March 18, 1998 requests for reconsideration, the Office found that these requests were untimely as appellant did not make the requests within one year of the Office's December 3, 1996 merit decision denying her claim. The Office then applied the "clear evidence of error" standard to deny the requests. The Board finds that appellant's January 22 and March 18, 1998 requests for reconsideration were timely filed as they were made within one year of the Office's merit decision of January 13, 1998. As noted above, the Office conducted a merit review of appellant's claim on January 13, 1998. Although the review rights attached to the decision gave appellant no such notice, appellant had one year from the date of this decision to request reconsideration and to have her request reviewed under the standard of review set forth in 20 C.F.R. § 10.138(b)(1).<sup>10</sup>

Because the Office erroneously found that appellant's January 22 and March 18, 1998 requests for reconsideration were untimely filed and because it applied an erroneous standard of review, the Board will set aside the Office's decisions of February 6 and April 21, 1998 and remand the case for an appropriate final decision on appellant's January 22 and March 18, 1998 requests for reconsideration.

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<sup>10</sup> *Vincente P. Taimanglo*, 45 ECAB 504 (1994) (explaining that the clear evidence of error standard is appropriate only for reconsideration requests made more than one year after an Office decision, the Board held that where the claimant submits a timely request for reconsideration, the Office must assess the request under 20 C.F.R. § 10.138(b)(1)(i)-(iii)).

The January 13, 1998 decision of the Office of Workers' Compensation Programs is affirmed. The April 21 and February 6, 1998 decisions of the Office are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
August 23, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member