U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINA L. WHEELER and U.S. POSTAL SERVICE,
POST OFFICE, Cedar Rapids, IA

Docket No. 03-1185; Submitted on the Record;
Issued July 3, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury to her neck and left shoulder causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On August 10, 2002 appellant, then a 32-year-old automation clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she damaged her rotator cuff and tore muscles in the back of her neck and left shoulder as a result of the repetition of sleeving and pulling trays involved with her federal employment. In support thereof, appellant submitted numerous reports and forms completed by Jeff Cater, a physician's assistant, which indicate that he treated appellant for a left trapezius strain. The employing establishment controverted the claim, arguing that no medical report had been submitted addressing causal relationship between the condition claimed and employment factors.

By letter to appellant dated August 20, 2002, the Office requested further information. In response, appellant submitted answers to questions propounded by the Office wherein she indicated that she believed that her duties of "[r]epetitive movement of sleeving out letter trays and pulling them from the racks and putting them in cages" caused her injury. She noted that she first noticed the pain on July 27, 2002. In further response, appellant submitted additional notes from Mr. Cater, including a note dated August 28, 2002 wherein Mr. Cater stated, "I certainly believe that the patient's left shoulder trapezius strain is directly work related."

By decision dated September 20, 2002, the Office denied appellant's claim, as it found that she had not established that she sustained an injury, as alleged. Specifically, the Office noted that, although the initial evidence of file supported that appellant actually experienced the claimed event, no physician diagnosed a condition in connection with this.

By letter dated February 3, 2003, appellant requested reconsideration. In support thereof, appellant submitted physical therapy notes. Appellant also submitted a note dated October 3,

2002 wherein Mr. Cater stated, "Based on circumstances described to me, in my medical opinion, injury patient suffered from was a direct result of her employment." Although this note appears to contain another signature in addition to that of Mr. Cater, the signature is illegible and does not appear to match the name of the osteopathic physician whose name is also on the note.

By decision dated February 25, 2003, the Office denied reconsideration of appellant's claim, as it found that the evidence submitted was cumulative and repetitious in nature.

The Board finds that appellant has not established that she sustained an injury due to her federal employment.

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 the 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.[1] The medical evidence required to establish a 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. The opinion of the physician must be based on a complete factual and medical background of the claimant,[2] must be one of reasonable medical certainty[3] 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.[4] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[5]

In the instant case, the Office found that appellant had established that she actually experienced the claimed event or circumstances which she alleged caused her injury. However, the Office denied appellant's claim because the record did not contain a report by a physician diagnosing a condition in relation to appellant's employment. The Board agrees that the record does not contain a report wherein a physician diagnosed a condition with regard to appellant's employment. The report of Mr. Cater, a physician's assistant, was not countersigned or reviewed

[1] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[2] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[3] *Morris Scanlon*, 11 ECAB 384-85 (1960).

[4] *William E. Enright*, 31 ECAB 426, 430 (1980).

[5] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

by a physician. Therefore, it does not constitute medical evidence.[6] Accordingly, the Office properly denied appellant's claim for benefits in its September 20, 2002 decision.

The Board further finds that the Office, by its February 25, 2003 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may:
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> (1) end, decrease or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[7]

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new 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. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8]

The evidence appellant submitted in support of reconsideration largely duplicates evidence already in the record. The new evidence does not contain a physician's report linking appellant's condition to her employment. Although appellant submitted a new report by Mr. Cater, and although this report contains two signatures, the second signature is illegible and it is not clear that it is the signature of a physician. Furthermore, appellant's February 3, 2003 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Accordingly, the Office properly denied appellant's request for reconsideration on the merits.

[6] *See James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

[7] 5 U.S.C. § 8128(a).

[8] *James R. Bell*, 52 ECAB 414 (2001); *Eugene F. Butler*, 35 ECAB 393 (1984).

The decisions of the Office of Workers' Compensation Programs dated February 25, 2003 and September 20, 2002 are hereby affirmed.

Dated, Washington, DC
July 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member