

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

VONCILE WILLIAMS, Appellant)

and)

DEPARTMENT OF JUSTICE, BUREAU OF)
PRISONS, METROPOLITAN)
CORRECTIONAL CENTER, New York, NY,)
Employer)

**Docket Nos. 03-1741 & 03-1874
Issued: August 11, 2005**

Appearances:

Willie Jones, for the appellant

Thomas G. Giblin, Esq., for the Director

Oral Argument March 23, 2005

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
A. PETER KANJORSKI, Alternate Judge

JURISDICTION

On July 1, 2003 appellant, through her attorney, filed a timely appeal from a December 18, 2002 merit decision of the Office of Workers' Compensation Programs denying her claim for an employment-related injury, and an April 7, 2003 merit decision denying modification of the finding that she did not establish an injury or condition due to factors of her federal employment. On July 16, 2003 appellant filed a timely appeal from merit decisions of the Office dated January 27 and April 29, 2003 denying modification of its finding that she failed to establish an employment-related injury on February 7, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these cases.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury on February 7, 2001 in the performance of duty; and (2) whether appellant has established that she sustained an injury to her neck, back and shoulder causally related to factors of her federal employment.

FACTUAL HISTORY -- DOCKET NO. 03-1874

On March 1, 2001 appellant, then a 46-year-old secretary, filed a traumatic injury claim alleging that on February 7, 2001 she injured her neck, back and right shoulder while participating in a self-defense class. She stopped work on February 28, 2001. The Office assigned the claim file number A2-2009428.

In a statement dated April 23, 2001, appellant described the circumstances surrounding her injury. She noted that she had previously sustained employment injuries on May 16 and December 20, 1999 during weapons qualifications training. Appellant further indicated that she was in an employment-related motor vehicle accident in March 1989.

In disability certificates dated March 27 and April 27, 2001, Dr. Milton M. Smith, a Board-certified pediatrician who specializes in orthopedic surgeon and pediatric cardiology, found that appellant was totally disabled from employment.

By decision dated May 16, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a medical condition due to the February 7, 2001 employment incident.

In a form report dated May 16, 2001, Dr. Smith diagnosed a cervical sprain/strain and lumbosacral sprain. He checked "yes" that the condition was causally related to appellant's employment and found appellant unable to work beginning January 2001.

On November 15, 2001 appellant, through her representative, requested reconsideration.

By decision dated December 19, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and immaterial and thus insufficient to warrant merit review.

In a report dated February 14, 2001, received by the Office on January 17, 2002, Dr. Smith diagnosed cervical sprain, lumbosacral radiculopathy and right shoulder sprain. He related:

"[Appellant] states that at work on February 7, 2001 while doing self-defense she felt pain in her neck, back and right arm.

"I have been treating [her] for injuries to the neck, back and right shoulder on May 6 and December 20, 1999. The current injuries appear to be exacerbations of the prior injuries."¹

On January 23, 2002 appellant requested reconsideration of her claim. She submitted a report dated January 22, 2002 from Dr. Smith who noted that he had treated appellant since February 14, 2001 when she "injured herself on the job during self-defense training." He opined that she was disabled beginning February 28, 2001.

¹ The record also contains progress reports from Dr. Smith dated February through August 2001.

In a report dated July 31, 2001, received by the Office on February 8, 2002, Dr. Maria S. Navedo-Rivera, a physiatrist, noted appellant's history of an injury on February 7, 2001 and that she had "a previous injury to her neck and back on December 22, 2000." She diagnosed cervical derangement, lumbosacral derangement and chronic pain.

By decision dated May 1, 2002, the Office denied modification of its December 19, 2001 decision.

Appellant again requested reconsideration on May 19, 2002. She submitted a report dated August 14, 2001 from Dr. Smith who discussed his treatment of her for a May 6, 1999 injury. He stated:

"[Appellant] went back to work and in February 2001 she again sustained injuries to her neck, back and right shoulder at work. She states that she was doing self-defense when she developed complaints to these areas. She had to stop work on February 28, 2001. These complaints were related to the prior injuries noted above."

In a decision dated June 24, 2002, the Office denied modification of its May 1, 2002 decision.

On August 4, 2002 appellant requested reconsideration. She submitted a report from Dr. Smith dated July 28, 2002 who noted that he was releasing her to work with restrictions. He stated:

"In summary, [appellant] sustained injuries to her neck, back and right shoulder on May 6, 1999 while firing a weapon at work. She sustained subsequent injuries to her neck, back and right shoulder on May 6, 1999 while in a firing range and on February 14, 2001 while doing self-defense training. [Appellant] has continued pain in these areas and limited range of motion. The specific medical condition resulted from the definitive employment trauma."²

By decision dated January 27, 2003, the Office denied modification.

On February 7, 2003 appellant again requested reconsideration. She submitted 2000 and 2001 progress reports from Dr. Smith.

In a decision dated April 29, 2003, the Office denied modification of its prior decisions on the grounds that the weight of the medical evidence was insufficient to establish that she sustained a medical condition due to her February 7, 2001 employment activities. The Office noted that appellant had accepted employment injuries on May 6 and December 22, 1999 for lumbosacral and neck sprains, which were assigned file numbers A2-759428 and 02-766399 respectively. The Office indicated that it had reviewed the medical evidence from appellant's December 22, 1999 injury in reaching its decision.

² The record contains progress reports from Dr. Smith dated November 25 and December 17, 2002.

FACTUAL HISTORY -- DOCKET NO. 03-1741

On August 9, 2002 appellant, then a 47-year-old lobby officer/information receptionist, filed a claim for injuries sustained on that date to her neck, back, right shoulder and right leg in the performance of duty. She noted that she continually bent, reached and rotated her body “while performing the duties of a lobby officer” and that this caused neck, back, right shoulder and right knee pain. Appellant stopped work on August 13, 2002. The Office assigned the case file number A2-2028887.

In a statement dated October 14, 2002, appellant related that when she returned to limited-duty employment on July 29, 2002 she performed duties outside of her restrictions. She attributed the pain in her neck, back and right arm to performing the duties of a lobby officer from July 29 to August 9, 2002 “because of the constant moving around this position requires.”

In a progress note dated October 22, 2002, Dr. Smith treated appellant for continued neck and back pain.

By decision dated December 18, 2002, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that she sustained a diagnosed condition due to the identified employment factors.

On January 14, 2003 appellant requested reconsideration. In support of her request, she submitted a report dated January 8, 2003³ from Dr. Smith, who indicated that appellant related that “at work on August 9, 2002 while bending and lifting she sustained injuries to her neck, back and right shoulder.” He stated:

“Past medical history includes a work-related injury on May 6, 1999 when she was firing a weapon and sustained injuries to her neck, back and right shoulder. She also sustained injuries to her neck, back and right shoulder on February 14, 2001 while doing self-defense training.”

Dr. Smith diagnosed cervical and lumbosacral radiculopathy and right shoulder internal derangement.⁴

By decision dated April 7, 2003, the Office denied modification of its December 18, 2002 decision. The Office found that appellant’s claim was for an occupational disease rather than a traumatic injury as she alleged employment factors which occurred longer than a single workday or shift.⁵

³ The report is dated January 8, 2002; however, it is apparent that this is a typographical error.

⁴ The record contains progress reports dated August 2002 to February 2003 from Dr. Smith.

⁵ The regulations define an occupational disease or illness as “a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). A “traumatic injury” is defined as “a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee).

LEGAL PRECEDENT -- ISSUES 1 & 2

The Office procedure manual provides:

“Doubling is the combination of two or more case files. It occurs when an employee has sustained more than one injury and it is necessary to combine all of the records in one case folder. The case records are kept separately but travel under one claim number, which is known as the ‘master file.’”⁶

Regarding when to double cases, the Office’s procedure manual states:

“Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files. Cases meeting one of the following tests must be doubled:

“(1) A new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc.”⁷

Office procedures further provide that cases “should be doubled as soon as the need to do so becomes apparent.”⁸

ANALYSIS -- ISSUES 1 & 2

In this case, the Office previously accepted that appellant sustained injuries to her neck and back on May 6 and December 20, 1999. The Office assigned the cases file numbers A2-0759428 and A2-766399, respectively. Appellant subsequently filed a claim for an injury to her neck, back and right shoulder due to a traumatic injury on February 7, 2001. On August 9, 2002 she filed a claim alleging that factors of her federal employment from July 29 to August 9, 2002 caused pain in her neck, back, right shoulder and right knee. Office procedure provides that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.⁹ In this case, as appellant filed multiple claims for injuries to the same part of her body, the Office should have doubled the case files in accordance with its procedures. Additionally, the Office, in its April 29, 2003 decision under Docket No. 03-1874, referenced the medical evidence contained in the case record for appellant’s accepted December 22, 1999 injury; however, the record before the Board contains no information regarding that claim. As the Office did not associate the current claims filed by appellant either

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(a) (February 2000).

⁷ *Id.* at Chapter 2.400.8(c)(1).

⁸ *Id.* at Chapter 2.400.8.

⁹ *Id.*

together or with her prior claims, the Board will remand the case to the Office for consolidation of all appellant's prior claims for the same part of the body, to be followed by a *de novo* decision on the merits of the claim to protect her appeal rights.¹⁰

CONCLUSION

The Board finds that the cases are not in posture for decision. The cases will be remanded for consolidation of the case records and a *de novo* decision on appellant's claims.

ORDER

IT IS HEREBY ORDERED THAT the decisions dated April 29 and January 27, 2003 in Docket No. 03-1874 and the decisions dated April 7, 2003 and December 18, 2002 in Docket No. 03-1741 are set aside and the case is remanded for further proceedings consistent with this decision by the Board.

Issued: August 11, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

A. Peter Kanjorski, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ Appellant submitted new evidence with her appeal. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.