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LORAIN R. MAGEE, Appellant)	
)	
and)	Docket No. 04-1670
)	Issued: January 13, 2005
DEPARTMENT OF THE NAVY,)	
NAVAL HOSPITAL, Bremerton, WA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

On June 21, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' May 6, 2004 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has met her burden of proof in establishing that her claimed cervical and thoracic conditions were sustained in the performance of duty.

This is the second appeal before the Board. Appellant, a 54-year-old nurse, filed a Form CA-2 claim for benefits on April 7, 1999, alleging that she developed a herniated disc at T1, lumbar radiculopathy and pains in her right hip, left knee, both arms, her neck and both hands due to factors of her employment. The Office had previously accepted a claim in 1991 for lumbar spinal stenosis and surgery involving L3 to L5 decompressive laminectomy with medial facetectomies. By letter dated August 18, 1999, appellant advised the Office that her job as a nurse

required her to engage in activities which required a great deal of lifting, bending, twisting and holding. In a report dated September 7, 1999, Dr. Joan Halley, an osteopath and the attending physician, stated that these activities put significant stress on appellant's neck, the use of her arms, and on her back, and that she had diagnosed C8 radiculopathy on May 29, 1998. Dr. Halley advised that appellant's continued employment as a labor and delivery nurse would continue to exacerbate her symptoms, worsening her neck and back pain. The Office accepted a claim for aggravation of low back osteoarthritis in May 2002. Dr. Halley submitted a report dated April 4, 2001 in which she advised that appellant sustained three different injuries in 1997, which contributed to the herniation of the cervical/thoracic disc, which appeared to be more strain and overuse related. She opined that, in light of several injuries appellant sustained and her underlying degenerative disc disease, they could have contributed to a disc herniation because of pain in appellant's neck and arm and because of the numbness radiating into her left hand. In a June 6, 2001 report, Dr. Halley restated her opinion that appellant had problems with pain in her back as well as her neck, shoulder and left arm. She reiterated that appellant's employment activities as a nurse had exacerbated all of these complaints and had contributed to her current disability in her neck and lumbar spine.

By decision dated December 4, 2001, the Office denied appellant's claim, finding that she failed to establish that she had sustained a medical condition or disability causally related to factors of her federal employment. In an October 22, 2002 decision, the Board found that the reports from Dr. Halley were sufficient to require further development of the issue of whether appellant's cervical and thoracic conditions were causally related to factors of her employment. The Board remanded the case to the Office for further development of the medical evidence. The facts of this case are set forth in the Board's January 9, 2001 decision and are herein incorporated by reference.¹

The Office referred appellant to Dr. William Furrer, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated March 13, 2003, Dr. Furrer stated findings on examination, reviewed the medical history and the statement of accepted facts, and opined that her cervical and low back conditions were fixed and stable. He advised that she required no additional active treatment measures to treat any residuals of her 1991 employment injury. Dr. Furrer stated:

"On a more probable than not basis, [appellant] sustained an injury to her neck and left upper extremity lifting luggage in approximately May of 1998. Following that injury [appellant] was diagnosed to have a cervical radiculopathy and was found to have diffuse cervical spondylosis and was found to have a disc protrusion at the T1-2 level. It cannot be stated, on a more probable than not basis, that the cervical spondylosis nor the disc protrusion at T1-2 were related in any way to her work as a registered nurse at the Bremerton Naval Hospital. As noted above, [appellant] did have pre-existent cervical spondylosis. It cannot be stated, on a more probable than not basis, that except for the specific activities of [appellant's] employment, she would not have developed the cervical spondylosis. As noted above, it is felt that, on a more probable than not basis,

¹ Docket No. 02-1404 (issued October 22, 2002).

[appellant's] cervical and upper thoracic conditions arose solely secondary to the episode of lifting her luggage during her vacation in May of 1998.”

By decision dated May 19, 2003, the Office denied appellant's claim, finding that the opinion of Dr. Furrer constituted the weight of the medical evidence.

On May 27, 2003 appellant requested an oral hearing, which was held on February 9, 2003. Appellant submitted a March 3, 2004 opinion from Dr. Halley, who expressed her disagreement with Dr. Furrer. She reiterated that appellant's employment as a labor and delivery nurse exacerbated her underlying osteoarthritis. Dr. Halley stated:

“I wish I could provide more specific documentation rather than hearsay regarding the onset of cervical dis[c] disease and herniation; however, reviewing the chart with [appellant], today, revealed no significant documentation.”

By decision dated May 6, 2004, an Office hearing representative affirmed the May 19, 2003 Office decision.

LEGAL PRECEDENT

An individual seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 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/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 causal relationship is usually rationalized medical 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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical and thoracic bilateral osteoarthritic knee condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

In the instant case, appellant has failed to meet her burden of submitting rationalized, probative medical evidence which relates her claimed cervical and thoracic bilateral conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

Following the Board's remand for further development, the Office referred the case to a second opinion examiner, Dr. Furrer, who opined that it was unlikely that the cervical spondylosis and disc protrusion at T1-2 were related in any way to appellant's work as a registered nurse at Bremerton Naval Hospital. He also believed that it was unlikely that appellant's preexisting cervical spondylosis was caused or aggravated by the specific activities of her employment as a labor and delivery nurse. Dr. Furrer stated that, in all probability, appellant's cervical and upper thoracic conditions were solely attributable to the episode of lifting her luggage in May 1998. The Office properly found that Dr. Furrer's opinion was rationalized, probative and sufficient to constitute the weight of the medical evidence in its May 19, 2003 decision.

Following the May 19, 2003 decision, appellant submitted Dr. Halley's March 3, 2004 report, which reiterated her previous opinion that appellant's employment as delivery and labor nurse in 1998 exacerbated her cervical and thoracic pain and expressed her disagreement with Dr. Furrer's opinion. This opinion, however, was not deemed sufficient to establish a causal relationship in previous Office and Board decisions. Further, Dr. Halley stated that she was unable to provide more specific documentation than hearsay in regard to the onset of appellant's cervical disc disease and herniation. Thus, appellant failed to provide a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Halley did not sufficiently describe appellant's job duties

⁵ *Id.*

⁶ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).

or explain the medical process through which such duties would have been competent to cause the claimed condition. Dr. Halley's report, the only evidence appellant submitted in support of her claim, thus did not constitute sufficient medical evidence to establish that appellant's claimed cervical and thoracic conditions were causally related to her employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed cervical and thoracic conditions were causally related to her employment. The Board therefore affirms the Office's May 6, 2004 decision denying benefits for her claimed cervical and thoracic conditions.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that her claimed cervical and thoracic conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Id.*