United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 06-1883**
	)	**Issued: January 30, 2007**
PEACE CORPS, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 26, 2006 merit decision, denying her claim for compensation on the grounds that fact of injury in the performance of duty was not established and a July 6, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an aggravation to her previous back condition in the performance of her duty, causally related to factors of her federal employment; and (2) whether the Office properly declined to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

On November 21, 2005 appellant, a 34-year-old Peace Corps volunteer, filed an occupational disease claim (Form CA-2) alleging problems with her lower back. She first became aware of her condition on October 1, 2002 during Peace Corps training and again on

November 25, 2003. Appellant stated that her back condition was aggravated due to poor "sitting and sleeping conditions in Nepal." She was stationed in Nepal from September 13, 2002 to September 22, 2004.

On March 26, 2002 appellant's preservice medical evaluation noted that she experienced back pain and stiffness which was probably secondary to a past fracture of her coccyx. There was no radiculopathy present. The condition was not debilitating and was controlled through exercise. The evaluation was signed by an unknown physician.

On September 18, 2002 the Peace Corps medical officer for Nepal noted on a medical interview form for appellant that she had "no problems with back pain." On November 25, 2003 appellant sought treatment for complaints of back pain. Exercises were prescribed. The employing establishment noted on a December 16, 2003 Mid Service Health Evaluation that appellant had experienced some back pain in the mornings. On June 1, 2004 appellant requested physical therapy for her back pain. The medical notes reveal that there was no specific trauma or radiculopathy and that appellant had back pain prior to arriving in Nepal. She complained that the pain had been exacerbated since her arrival in Nepal.

The June 2, 2004 notes from Anne-Marie Schonemann, a physiotherapist, noted that appellant had low back pain for 10 years which had worsened with no apparent reason over the prior 4 to 6 months. She noted decreased movement in extension of L3-4 and prescribed an exercise program. On August 23, 2004 the records reflect that appellant was given permission to see an orthopedist for her back pain while in the United States on leave. A September 6, 2004 progress report from Ms. Schonemann noted that appellant was doing better. Appellant had a full range of motion, but had some lumbar spine stiffness from sitting on floors with her legs crisscrossed. She was advised to continue her exercise program and practice good posture and ergonomics.

On November 21, 2005 the employing establishment received records from Jennifer Fleming, a physical therapist. Included was page 2 of an initial evaluation stating that appellant had trunk weakness, discomfort when sitting or standing for long periods of time and decreased posture. Treatment was expected to be done one to three times a week from one to six weeks. Appellant was treated on December 7, 9 and 14, 2004. On January 14, 2005 Ms. Fleming issued a discharge summary which noted that appellant was last seen on December 14, 2004 and had cancelled further treatment.

By letter dated December 21, 2005, the Office advised appellant that she needed to submit additional evidence with respect to her claim. She was asked to provide details about the employment-related activities she believed contributed to her condition and a comprehensive medical report from a physician with symptoms of her condition, results of examinations and tests, treatment provided and a statement addressing the cause of her condition. In addition, the physician's report needed to include details of how exposure in the federal workplace contributed to appellant's condition. Appellant did not respond within the 30 days allotted.

By decision dated January 26, 2006, the Office denied appellant's claim on the grounds that causal relationship was not established between her low back condition and her employment

with the Peace Corps. The Office found that appellant's medical evidence, consisting of records from the employing establishment listing complaints of back pain and physical therapy notes, were insufficient to establish that her back condition resulted from her employment. The Office noted that appellant had failed to provide medical evidence from a physician as requested.

By letter dated April 4, 2006, appellant requested reconsideration of her claim. She submitted a March 8, 2006 report from Dr. William M. Strassberg, an orthopedic surgeon, who stated that appellant's back examination was normal and speculated that her lower back pain was due to "musculoskeletal issues." He recommended "several physical therapy sessions to assist in teaching ... a low back pain treatment program."

By decision dated July 6, 2006, the Office denied appellant's request for reconsideration, finding that Dr. Strassberg's medical report was not relevant because it failed to address causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.[1]

To establish that an injury was sustained in the performance of duty in an occupational disease claim,[2] an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.[3]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported

[1] *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

[2] An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment. *William Taylor, supra* note 1; *see also* 20 C.F.R. § 10.5(q).

[3] *Donna L. Mims*, 53 ECAB 730 (2002).

by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.[4]

The mere fact that a disease 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 disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[5]

ANALYSIS -- ISSUE 1

On October 27, 2005 appellant, filed an occupational disease claim for benefits alleging that her low back condition was aggravated during her employment with the employing establishment. The Board finds that there is insufficient medical evidence to establish that her back condition was caused or aggravated by her work with the Peace Corps.

Whether appellant's employment caused or aggravated her medical condition generally can be established only by specific medical evidence from a physician. The Office notified appellant of this requirement in its December 21, 2005 letter. The Office correctly noted in its January 26, 2006 decision that appellant's evidence consisted of records from the employing establishment and physical therapy notes. The employing establishment's records reflect that appellant experienced low back pain before, during and after her employment. However, these treatment records were not signed by a physician. The notes from her occupational and physical therapists are of no probative value because physical therapists are not physicians as defined under 5 U.S.C. § 8101(2).[6]

Appellant failed to submit medical evidence from a physician in support of her claim. She has not met her burden of proof to establish her claim.[7]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[8] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[9] To be entitled to a merit review of an Office decision

[4] *Id.*

[5] *Id.*

[6] Section 8102(2) provides as follows: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[7] *See Richard A. Weiss*, 47 ECAB 182 (2000).

[8] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.

[9] 20 C.F.R. § 10.606(b)(2).

denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[10] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[11]

ANALYSIS -- ISSUE 2

In support of her request for reconsideration, appellant submitted an April 4, 2006 report from Dr. Strassberg, an orthopedic surgeon, who examined appellant and stated that her back was normal. Although he reported that appellant's back pain was due to "typical mechanical low back symptoms," he did not provide any diagnosis and did not relate the symptoms to her work while the report is new to the record it is not relevant to the underlying issue which is causal relationship. Appellant has neither demonstrated that the Office erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, she was not entitled to further merit review.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a low back condition in the performance of duty, causally related to factors of her federal employment. The Board further finds that the Office properly denied her request for further merit review.

[10] 20 C.F.R. § 10.607(a).

[11] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the July 6 and January 26, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 30, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board