

¹ The record also includes an August 23, 2006 merit decision denying appellant's claim for recurrence of disability beginning May 8, 2006. She subsequently requested an oral hearing, which was held on January 25, 2007. However, the Branch of Hearings & Review had yet to issue a final decision by the time appellant filed her current appeal. In the March 6, 2007 filing, appellant's representative did not specifically request that the Board review the August 23, 2006 decision. Accordingly, the Board will not exercise jurisdiction over this latest Office decision. The Board is precluded from considering any evidence that was not part of the record at the time the Office issued the June 22, 2006 decision denying reconsideration. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

This case was previously before the Board. Appellant, a 41-year-old maintenance support clerk, has an accepted occupational disease claim for bilateral wrist tendinitis, right carpal tunnel syndrome and cervical strain, which arose on or about January 8, 2003.² In July 2003, appellant was diagnosed with cervical degenerative disc disease and spinal stenosis.³ In February 2004, she was diagnosed with right shoulder tendinitis with impingement and cervical disc disease with right cervical radiculopathy. With the exception of the previously noted cervical strain, the Office has not accepted any other cervical conditions as being related to the January 8, 2003 employment injury.⁴

On June 22, 2004 the Office terminated appellant's wage-loss compensation and medical benefits.⁵ An Office hearing representative subsequently affirmed the termination of wage-loss compensation, but found that appellant remained eligible for medical benefits and thus, set aside that aspect of the June 22, 2004 decision. On the prior appeal, the Board affirmed the hearing representative's August 1, 2005 decision terminating wage-loss compensation.⁶ In its January 11, 2006 decision, the Board found that the Office met its burden to terminate wage-loss compensation as the evidence demonstrated that appellant was no longer disabled due to her January 8, 2003 employment injury. The Board also found that appellant failed to establish that her ongoing cervical condition and her diagnosed right shoulder tendinitis with impingement were related to the January 8, 2003 employment injury.

In a December 16, 2005 report, Dr. Robert R. McIvor, a Board-certified orthopedic surgeon and Office referral physician, diagnosed bilateral carpal tunnel compression, multilevel cervical disc degeneration and probable minimal impingement syndrome in both shoulders. He did not recommend any specific treatment for appellant's cervical condition other than providing her with a cervical pillow and sponge collar. Dr. McIvor also did not provide a specific opinion on causal relationship.

The Office sought clarification on whether appellant's cervical degenerative disc disease was causally related to her January 8, 2003 employment injury. Dr. McIvor responded on January 13, 2006, explaining that appellant's cervical degenerative disease was longstanding, but was rendered symptomatic by her frequent use of the computer and sustained positioning of her

² Appellant underwent a right carpal tunnel release on September 22, 2003.

³ A July 21, 2003 cervical magnetic resonance imaging (MRI) scan revealed multilevel discogenic disease. Dr. Anthony J. Abene, a Board-certified orthopedic surgeon and Office referral physician, explained in his July 23, 2003 report that appellant's cervical degenerative disc disease and spinal stenosis were underlying conditions that were not created by the employment injury. However, they were related to appellant's work factors by way of aggravation of a preexisting condition. Dr. Abene further indicated that the aggravation should be temporary.

⁴ The Office also had not accepted an employment-related right shoulder condition.

⁵ The Office based its decision on a May 12, 2004 report from Dr. John W. Batcheller, a Board-certified orthopedic surgeon and impartial medical examiner.

⁶ Docket No. 05-1819 (issued January 11, 2006). The Board's January 11, 2006 decision is incorporated herein by reference.

head and neck. He further explained that the condition was not connected with any specific injury, but rather a cumulative trauma-type situation on the basis of appellant's work activities.

In a February 13, 2006 report, Dr. Mark H. Chan, a Board-certified physiatrist who treated appellant for her cervical condition dating back to 2003, indicated that the cervical strain and MRI scan documented foramina stenosis were related injuries and in practical terms could not be separated in regards to causality.

The Office again requested clarification from Dr. McIvor. In a March 5, 2006 supplemental report, he stated that appellant's cervical degenerative disc disease was almost certainly present prior to her January 8, 2003 complaints of pain and numbness in the right hand. He further stated that the condition presumably had not been symptomatic until more recently. Dr. McIvor explained that the only argument that work would have something to do with the neck being symptomatic would be the fact of appellant having to hold her head and neck in a fixed position while operating the computer. He further explained that this would put a certain amount of strain on the neck and the damaged discs could become inflamed on that basis.

In a March 23, 2006 decision, the Office disallowed appellant's cervical degenerative disc disease. The Office found that the record did not establish that this condition was causally related to the January 8, 2003 employment injury.

On March 27, 2006 appellant requested reconsideration based on Dr. McIvor's report. Appellant did not submit any additional evidence with the March 27, 2006 request. By decision dated June 22, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁸

Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹

⁷ 5 U.S.C. § 8101-8193 (2000).

⁸ 20 C.F.R. § 10.115(e), (f) (2007); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁹ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

ANALYSIS -- ISSUE 1

The medical evidence of record fails to establish that appellant's cervical degenerative disc disease is causally related to her January 8, 2003 employment injury. When Dr. Abene examined appellant in July 2003, he explained that her cervical degenerative disc disease and spinal stenosis were underlying conditions that were not created by the employment injury, but were related to the work factors by aggravation of a preexisting condition, which should only be temporary. At the time of the examination, appellant was working part-time, limited duty. Dr. Abene did not clearly indicate whether appellant's pre-January 8, 2003 work exposure was the aggravating factor or whether her continued employment was the cause of her ongoing cervical complaints.

Dr. Chan initially diagnosed cervical disc disease with right cervical radiculopathy in February 2004. However, at that time, he did not specifically attribute the diagnosed cervical condition to appellant's January 8, 2003 injury. In Dr. Chan's recent February 13, 2006 report, he stated that appellant's cervical strain and MRI scan documented foramina stenosis were related injuries and in practical terms could not be separated. But despite his statement that a causal relationship exists, Dr. Chan's opinion is insufficient because he failed to explain how appellant's cervical disc disease was causally related to her January 8, 2003 employment injury.

Dr. McIvor expressed the opinion that appellant's underlying cervical degenerative disc disease was aggravated by her employment activities. He explained that the condition was not connected with any specific injury, but rather a cumulative trauma-type situation on the basis of appellant's work activities. Dr. McIvor indicated that having to hold her head and neck in a fixed position while operating the computer would put a certain amount of strain on the neck and the damaged discs could become inflamed on that basis. It is not clear, however, whether the aggravation he spoke of occurred on or about January 8, 2003 or subsequent thereto. If the latter scenario is the more accurate description of the onset of appellant's condition, then it cannot be said to be related to the current claim. This appears to be the more reasonable interpretation of Dr. McIvor's findings given his March 5, 2006 statement that "the condition presumably [had] not been symptomatic until more recently...."

Appellant's cervical degenerative disc disease may very well have been aggravated by her employment activities. However, the current record does not clearly establish that her pre-January 8, 2003 employment exposure was an aggravating factor. Accordingly, the Office properly found that appellant failed to establish that her cervical degenerative disc disease was causally related to her January 8, 2003 employment injury.

LEGAL PRECEDENT -- ISSUE 2

The Office has the discretion to reopen a case for review on the merits.¹⁰ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point

¹⁰ 5 U.S.C. § 8128(a).

of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

Appellant's March 27, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹³ She also failed to satisfy the third requirement under section 10.606(b)(2). Appellant did not submit any relevant and pertinent new evidence with her March 27, 2006 request for reconsideration and therefore she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹⁴ Because appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the March 27, 2006 request for reconsideration.

CONCLUSION

Appellant has not established that her cervical degenerative disc disease is causally related to the January 8, 2003 employment injury. The Board further finds that the Office properly denied appellant's March 27, 2006 request for a review of the merits of her claim.

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² *Id.* at § 10.608(b).

¹³ *Id.* at § 10.606(b)(2)(i) and (ii).

¹⁴ *Id.* at § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the June 22 and March 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 25, 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