United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 07-1421**
	)	**Issued: October 18, 2007**
U.S. POSTAL SERVICE, Burlington, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2007 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 1, 2006, which denied her occupational disease claim. She also timely appealed the Office's February 14, 2007 nonmerit decision denying reconsideration.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant established that she sustained an occupational disease in the performance of duty and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim on the grounds that she did not provide any additional evidence or legal argument to establish that she sustained an occupational disease.

[1] The record includes new evidence received after the Office issued the February 14, 2007 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

FACTUAL HISTORY

On October 13, 2006 appellant, then a 52-year-old city letter carrier, filed an occupational disease claim alleging that she sustained chronic pain in both knees and hip pain as a result of her employment. She submitted a supporting statement describing the type of work she performs which aggravates her knees and hips.

On November 9, 2006 the Office informed appellant that the materials submitted to date were insufficient to support her claim as there was no medical report and that additional factual information was needed. Appellant responded with factual information in a November 20, 2006 letter.

Additional information was also received. A November 2, 2006 duty status report from Dr. Stephen Lucey, an orthopedic surgeon, provided work restrictions for appellant. A November 2, 2006 visit report from Dr. Lucey described appellant's work activity walking up and down hills and specifically when she slipped onto her left knee which twisted her right leg and hip. The report revealed that x-rays of her hip were normal. Dr. Lucey recommended a magnetic resonance arthrogram (MRA) of the right hip as he was concerned about a right hip labral tear. In a December 1, 2006 letter, the employing establishment concurred with appellant's statement that her job consists of "several dismounts, park and loop while delivering mail."

On January 22, 2007 the employing establishment case manager requested additional information from appellant to support her claim. Appellant responded in a November 28, 2006 letter describing the type of work activities that aggravate her condition.

On January 11, 2007 the Office denied appellant's occupational disease claim on the grounds that there was no evidence of a diagnosis connected with the accepted events.

On January 30, 2007 appellant requested reconsideration. She submitted an additional letter dated January 30, 2007 from Dr. Lucey in which he opined that appellant's condition was from an on-the-job injury and advised that an MRA was needed to come to a diagnosis. On February 14, 2007 the Office issued a nonmerit decision denying appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and repetitious.

LEGAL PRECEDENT -- ISSUE 1

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 diagnosed condition is causally related to the employment factors identified by the claimant.[2]

[2] *Elizabeth H. Kramm (Leonard O. Kramm),* 57 ECAB ___ (Docket No. 05-715, issued October 6, 2005).

The medical opinion needed to establish an occupational disease claim must be 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.[3]

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 condition and employment. Neither the fact that the condition became apparent during a period of employment, nor employee's belief that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relationship.[4]

ANALYSIS -- ISSUE 1

Appellant alleged that her knee and hip conditions were causally related to factors of her federal employment. The employing establishment does not contest that she engaged in the identified activities during her federal employment. The issue is whether the medical evidence is sufficient to establish a diagnosed knee and hip condition causally related to the identified work factors. The Board finds that appellant has submitted insufficient medical evidence to establish that she sustained a condition in the performance of duty.

The medical evidence does not establish the existence of a disease or condition sustained by appellant in the performance of duty. The medical evidence consists of a November 2, 2006 duty status report and a November 2, 2006 visit report both from Dr. Lucey. In the duty status report, Dr. Lucey provided work restrictions for appellant. No diagnosis was provided and no rationalized medical opinion was provided linking any medical condition to appellant's employment. In the visit report, Dr. Lucey notes that appellant had bilateral knee pain and right hip pain however, pain is not a diagnosis.[5] He stated that he was worried about a right hip labral tear but did not affirmatively diagnosis appellant with a specific condition or disease. The medical evidence submitted fails to establish that appellant sustained a medical condition which was caused by the alleged factors of employment.

It is appellant's burden of proof to submit sufficient evidence to establish a diagnosed knee or hip condition and rationalized medical evidence causally relating any diagnosed medical condition to her federal employment. The evidence of record is not sufficient to meet appellant's burden of proof.

[3] *Donald W. Wenzel*, 56 ECAB ___ (Docket No. 05-146, issued March 17, 2005).

[4] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[5] A physician's mere diagnosis of pain does not constitute a basis for payment of compensation. *Robert Broome*, 55 ECAB 493 (2004).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act[6] does not entitle a claimant to a review of an Office decision as a matter of right.[7] The Act does not mandate that the Office review a final decision simply upon request by a claimant.[8]

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide 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 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.[9]

ANALYSIS -- ISSUE 2

The issue before the Board is not whether appellant has established her claim, but whether she met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring the Office to reopen her claim for merit review. Appellant requested reconsideration on January 30, 2007 and submitted a January 30, 2007 letter from Dr. Lucey in support. In his letter, Dr. Lucey opines that appellant's hip condition was a result of an on-the-job injury and that it needed urgent care to produce a diagnosis. He also recommended an MRA. The letter does not constitute relevant and pertinent new evidence as it repeats information already reviewed by the Office and does not contain a diagnosis nor rationalized medical opinion explaining causal relationship. It is well established that evidence which repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[10] Submitting documents which duplicate information previously submitted does not constitute a basis to reopen the case.

As appellant has not met any of the three regulatory requirements she is not entitled to a review of the merits of her claim. The Office properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to reconsideration of her claim nor has she demonstrated that she sustained an occupational disease in the performance of duty.

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[6] 5 U.S.C. § 8128(a).

[7] *Darletha Coleman*, 55 ECAB 143 (2003).

[8] *Donna M. Campbell*, 55 ECAB 241 (2004).

[9] 20 C.F.R. § 10.606(b)(2)(iii) (2004).

[10] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).)

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 14 and January 11, 2007 are affirmed.

Issued: October 18, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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