

On October 20, 2006 appellant, then a 50-year-old modified stock clerk, filed a recurrence of disability claim on October 3, 2006 causally related to a May 9, 2006 work injury. She experienced pain and tightness in her chest on October 3, 2006 “while performing inventory (opening and closing cabinet doors for about [two] hours)....” Appellant sought treatment at the

emergency room. She stated, "After tests in the hospital, it was diagnosed as pressure on a nerve stemming from the cervical radiculopathy, which is the condition that was accepted in May 2006." The employing establishment noted that she performed a variety of duties in a rehabilitation job. Appellant stopped work on October 3, 2006 and did not return.

In a report dated October 24, 2006, Dr. Mark A.P. Filippone, a Board-certified physiatrist, discussed appellant's complaints of increased pain in the left cervical spine radiating into the left shoulder and upper trapezius. He noted that she had not worked since October 3, 2006. Dr. Filippone listed findings on examination and referred appellant for epidural steroid injections. He opined that she remained disabled from employment.

On November 16, 2006 the Office notified appellant that it was adjudicating her October 2006 notice of recurrence of disability as a claim for a new injury. By letter dated December 4, 2006, it requested that she submit a detailed medical report addressing the relationship between any diagnosed condition and her claimed employment injury. She did not respond.

By decision dated January 5, 2007, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury as alleged. It accepted the occurrence of the October 3, 2006 work incident.

In an October 3, 2006 note from the employing establishment's clinic, a nurse described appellant's complaints of chest pain and tightness and referred her for evaluation by a physician. A magnetic resonance imaging (MRI) scan study of the cervical spine, obtained on October 4, 2006, revealed mild to moderate neural foramina stenosis on the left at C3-4, C5-6 and C6-7.

On January 22, 2007 appellant requested reconsideration. She submitted a January 3, 2007 report from Dr. Filippone who indicated that he had treated appellant in July 1997 for employment-related carpal tunnel syndrome, assigned file number xxxxxx169. He noted that appellant worked in a limited-duty capacity beginning 1997. On May 19, 2006 appellant experienced "symptoms of cervical pain radiating to the upper extremities and pain in the right shoulder as well as pain indicating the lateral humeral epicondyle bilaterally." Appellant attributed her radiating right cervical paraspinal pain to "working as a cardboard bailer from 1993 through 1996 or so, which involved manually pulling down overhead pull rope to shut the door on the bailer." Dr. Filippone noted that on October 3, 2006 appellant experienced pain and tightness in her chest opening and closing heavy drawers. He reviewed the results of the October 4, 2006 MRI scan study and a November 10, 2006 electromyogram which showed bilateral cervical polyradiculopathy and right carpal tunnel syndrome. Dr. Filippone determined that she experienced a recurrence of disability rather than a new injury as the "repetitive nature of [appellant's] work significantly aggravated the preexisting condition, resulting in the current disability." He stated that appellant was totally disabled and that her "aforementioned abnormalities and current disability are directly and solely the result of the occupational excessive exposure while at work for the [employing establishment]."

By decision dated April 16, 2007, the Office denied modification of its January 5, 2007 decision. It found that Dr. Filippone's January 3, 2007 report was insufficient to show that appellant sustained a traumatic injury on October 3, 2006.

In a May 31, 2007 report, Dr. Filippone again reviewed the diagnostic studies and noted that appellant returned to limited-duty employment in accordance with his May 29, 2007 duty status report. He described her continued complaints of neck pain with extensive walking and findings on examination of pain and spasm in the bilateral upper trapezius and cervical paraspinals. Dr. Filippone stated, "Based on the foregoing, it is my professional medical opinion that [appellant's] aforementioned abnormalities are directly and solely the result of the work-related incident of October 3, 2006 while at work for the [employing establishment]."

On July 3, 2007 appellant, through her attorney, requested reconsideration. By decision dated October 5, 2007, the Office denied modification of its April 16, 2007 decision. On October 16, 2007 appellant's attorney again requested reconsideration and asserted that the Office combine her two claims for a cervical condition. He further contended that the Office should have adjudicated her notice of recurrence of disability instead of finding that she had filed a claim for a new injury. By decision dated February 19, 2008, the Office denied modification of its October 5, 2007 decision.

On March 7, 2008 appellant, through her attorney, requested reconsideration. Counsel asserted that the October 3, 2006 hospital records showed that she had chest pain resulting from cervical radiculopathy. An October 3, 2006 hospital form report listed the diagnosis as chest pain with secondary diagnoses of brachial neuritis radiculitis, coronary atherosclerosis, unspecified migraine, hypercholesterolemia, tobacco use and thoracic/lumbosacral neuritis/radiculitis. In an October 6, 2006 discharge summary, Dr. Ferindoun Rezai, a Board-certified internist, diagnosed chest pain due to cervical radiculopathy versus reflux esophagitis.

By decision dated June 6, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant merit review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential

¹ 5 U.S.C. §§ 8101-8193.

² *Anthony P. Silva*, 55 ECAB 179 (2003).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that on October 3, 2006 she sustained pain and chest tightness while opening and closing cabinet doors in the course of her work duties. As she attributed her condition to new work factors that occurred during the course of one work shift, the Office properly adjudicated the claim as a traumatic injury claim.⁷ Appellant has established that the employment incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

The Board finds that appellant has not established that the October 3, 2006 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by probative medical evidence.⁸

On October 24, 2006 Dr. Filippone noted appellant’s complaints of cervical pain on the left radiating into the left shoulder and upper trapezius. He found that she was disabled from employment. Dr. Filippone, however, did not specifically address the cause of the diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.⁹

³ See *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁶ *Id.*

⁷ A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee). A recurrence of disability is a work stoppage caused by “a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.” 20 C.F.R. § 10.5(x).

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

In a report dated January 3, 2007, Dr. Filippone discussed his treatment of appellant for prior employment injuries, including right shoulder pain and cervical pain radiating into the upper extremities in May 2006. Appellant attributed her right cervical paraspinal pain to work as a cardboard bailer from 1993 through 1996. Dr. Filippone noted that she experienced chest pain while performing inventory on October 3, 2006. He found that appellant's performance of repetitive work aggravated her preexisting condition and resulted in total disability beginning October 3, 2006. Dr. Filippone concluded that her disability was due to "occupational excessive exposure." His did not, however, attribute any specific diagnosed condition directly to the October 3, 2006 work incident but instead generally found that performing repetitive work aggravated an unspecified preexisting condition. Additionally, Dr. Filippone did not provide any rationale for his finding that appellant was disabled from employment beginning October 3, 2006. A medical opinion not fortified by rationale is of diminished probative value.¹⁰

In a report dated May 31, 2007, Dr. Filippone reviewed the diagnostic studies and listed findings on examination of pain and spasm in the bilateral upper trapezius and cervical paraspinals. He attributed all abnormalities on diagnostic studies and examination to the October 3, 2006 work incident. Dr. Filippone, however, did not provide any rationale supporting his causation finding. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹¹ A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.¹²

On appeal, appellant's attorney contends that the Office should have adjudicated the notice of recurrence of disability. A recurrence of disability, however, does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.¹³ A recurrence of disability is a work stoppage caused by "a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."¹⁴ As appellant attributed her condition to opening and closing cabinet doors on October 3, 2006, she has alleged a new employment injury rather than a recurrence of disability pursuant to the Office's regulations.

¹⁰ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *See Beverly A. Spencer*, 55 ECAB 501 (2004).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997).

¹⁴ 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁵ 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) submit relevant and pertinent new evidence not previously considered by the Office.¹⁶ To be entitled to a merit review of an Office decision 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.¹⁷ 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.¹⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²⁰ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²¹

ANALYSIS -- ISSUE 2

The Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a medical condition causally related to opening and closing cabinet doors on October 3, 2006. On March 7, 2008 appellant's attorney requested reconsideration of the claim. He submitted reports from appellant's hospitalization from October 3 to 6, 2006. A hospital form listed the diagnoses as chest pain, brachial neuritis radiculitis, coronary atherosclerosis, unspecified migraine, hypercholesterolemia, tobacco use and thoracic/lumbar neuritis/radiculitis. On October 6, 2006 Dr. Rezai diagnosed chest pain due to either cervical radiculopathy or reflux esophagitis. The hospital records do not attribute any condition to the October 3, 2006 work incident and thus do not address the pertinent issue of causation. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.²²

¹⁵ 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."

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ 20 C.F.R. § 10.607(a).

¹⁸ 20 C.F.R. § 10.608(b).

¹⁹ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

²⁰ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

²¹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

²² *Freddie Mosley*, 54 ECAB 255 (2002).

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As appellant did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.²³

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on October 3, 2006 in the performance of duty. The Board further finds that the Office properly denied her request for review of the merits of her claim under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 6 and February 19, 2008 and October 5, 2007 are affirmed.

Issued: January 15, 2009
Washington, DC

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

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

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

²³ Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c).