

medical evidence did not establish that the claimed medical conditions resulted from the accepted events.

On March 2, 2007 Dr. Namir B. Kosa, a Board-certified internist, reported that he had been seeing appellant since 1999. Appellant was diagnosed with spinal stenosis, degenerative arthritis and lumbar disc herniation, tendinitis of the right shoulder, carpal tunnel syndrome and right trigger thumb. Electrodiagnostic of the cervical spine showed disc osteophyte complex C5-7 with mild narrowing of the central canal, moderate narrowing of the right neural foramen, mild narrowing of C5-7, left neural foramen, partial congenital fusion of C3-4. Electrodiagnostic testing of the lumbosacral spine showed disc herniation at L5-S1. However, electrodiagnostic testing of the right upper extremity showed subcranial impingement with tendinitis. Dr. Kosa addressed causal relationship:

“[Appellant’s] medical problems were caused and aggravated by repetitive movement of her joints to her work at the [employing establishment]. I believe with a reasonable medical certainty that [her] medical problems including her carpal tunnel syndrome and cervical and lumbar spine disease, right shoulder tendinitis, rotator cuff tear and trigger finger that needed to be treated surgically are due to her repetitive movement of her joints due to her work at the [employing establishment].”

In a decision dated April 6, 2007, an Office hearing representative affirmed the denial of benefits. He found that, although Dr. Kosa provided an affirmative opinion that appellant’s conditions were caused and aggravated by repetitive movement of her joints at work, he did not address the duration and extent of the physical activities she performed or explain how such physical activities caused or aggravated her conditions. On June 23, 2008 the Board affirmed.¹

On June 30, 2008 appellant requested reconsideration and submitted Dr. Kosa’s September 17, 2007 supplemental report. He stated:

“This letter is a clarification of any misunderstanding regarding my letter dated March 2, 2007 in behalf of [appellant]. [Appellant’s] medical problems including rotator cuff tear, trigger finger, right shoulder tendinitis, cervical and lumbar spine disease were due to her repetitive movements of her joints due to the work at the [employing establishment].

“I am aware of the long duration and the extent of the physical activity my patient performed at work. These joint problems happen to people with long[-]standing repetitive movements of the joints causing wear and tear and that is exactly what [appellant] has been doing all these years at the [employing establishment].”

Dr. Kosa referred appellant to Dr. Joseph Shatouhy, an orthopedic surgeon, for evaluation. On January 26, 2008 Dr. Shatouhy diagnosed cervical and lumbar disc degeneration

¹ Docket No. 07-2365 (issued June 23, 2008).

with referred pain to the upper and lower extremities. He offered his opinion on causal relationship:

“It is conceivable that [appellant] may have sustained a transient irritation to her cervical and lumbar areas during work activities, but she is suffering from degenerative process of the cervical and lumbar spine with gradual progression of the disease.”

In a decision dated October 2, 2008, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that the submitted evidence did not provide a well-reasoned medical opinion based upon a proper background showing a causal relationship between appellant’s conditions and factors of her federal employment.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS

The Office does not dispute that appellant performed repetitive task in the performance of her duties as a mail clerk. The question is whether those specific tasks caused or aggravated any of appellant's diagnosed medical conditions.

On the prior appeal, the Board affirmed the hearing representative's April 6, 2007 decision. The hearing representative found that the opinion of Dr. Kosa, the internist, was deficient as he did not indicate knowledge of the duration and extent of the physical activities appellant performed or provide an explanation of how those physical activities caused or aggravated her various medical conditions.

After the Board's decision, appellant submitted Dr. Kosa's September 17, 2007 report; however, he does not correct the deficiencies noted. Dr. Kosa once again offered an affirmative opinion that her various medical conditions were due to the repetitive movements of her joints at work. This is the same as in his May 2, 2007 report, which was found not sufficient to establish causal relationship.

Responding to one of the noted deficiencies, Dr. Kosa stated that he was aware of the long duration and extent of appellant's physical activities at work. However, simply stating that he was aware of appellant's work is not the same as demonstrating such familiarity with a description of the physical demands of specific work activities. Further, Dr. Kosa's general observation that this is what happens to people who do repetitive movements is vague and not addressed specifically to any factual matter relevant to appellant's claim. He diagnosed spinal stenosis, but he did not describe the nature of spinal stenosis or how specific duties appellant performed at work caused or aggravated her condition or resulted in disability. Dr. Kosa did not distinguish whether spinal stenosis may occur in the absence of repetitive movement, and if so, what factual matters from appellant's work would cause or contribute to her condition. He diagnosed multiple medical conditions, but failed to provide explanation of how specific work duties caused or aggravated each one. Suggesting that a condition is due to generally "wear and tear" is not persuasive medical rationale.

Appellant's representative contends on appeal that appellant has provided *prima facie* evidence of an occupational injury. Dr. Kosa's supplemental report is essentially duplicative of his prior report, which was lacking in probative value. It does not sufficiently advance appellant's claim to warrant further development of the medical evidence by the Office.

Dr. Kosa's opinion is further weakened by the referral to Dr. Shatouhy, an orthopedic surgeon. He allowed only that it was "conceivable" appellant may have sustained a transient irritation to her cervical and lumbar areas during work activities. Dr. Shatouhy appears to attribute appellant's conditions to a degenerative process of the cervical and lumbar spine with gradual progression of the disease. His January 6, 2008 report does not support appellant's claim of aggravation on contribution with probative medical rationale.

Because the medical evidence does not establish the critical element of causal relationship, the Board finds that appellant has not met her burden of proof. The Board will affirm the Office's October 2, 2008 decision to deny benefits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the claimed medical conditions are causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 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