

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARION T. KENNEY and U.S. POSTAL SERVICE,  
POST OFFICE, Providence, R.I.

*Docket No. 96-981; Submitted on the Record;  
Issued February 5, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a neck condition on April 23, 1994 causally related to factors of her federal employment.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical sprain and spasm on July 26, 1993. On May 19, 1994 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that she sustained a recurrence on April 23, 1994 causally related to the original July 7, 1993 employment injury. Appellant stated that since the original injury she had no problem requiring further treatment but since the recurrence she suffered constant neck pain. By letter dated July 27, 1994, the Office informed the employing establishment that it was treating appellant's claim as a new claim for a traumatic injury based upon appellant's description of the April 23, 1994 employment injury.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained a neck condition on April 23, 1994 causally related to factors of federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 of the Act, that an injury was sustained 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.<sup>1</sup> These are the essential

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<sup>1</sup> Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

The medical evidence required to establish a causal relationship, generally, 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 the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>3</sup>

The Office denied appellant's claim on September 20, 1994 stating that the evidence of record does not establish that the claimed condition is related to factors of appellant's federal employment. On August 14, 1995 the appellant requested reconsideration of the Office's decision. The Office denied appellant's request on November 1, 1995.

The evidence appellant submitted to support her claim does not contain any rationalized medical opinion establishing that appellant's neck condition is causally related to factors of her federal employment. Appellant submitted a medical report from her treating physician, Dr. Jane Butlin, dated May 8, 1995, in which she considered appellant's personal history, the results of a May 21, 1994 magnetic resonance imaging scan showing a small central disc protrusion at the C3-4 level, and performed a physical examination. Dr. Butlin stated that appellant's injury was most likely related to her work activities on April 23, 1994. She stated that appellant had one previous visit in July 1993 for transient neck pain which resolved within the week and required no further follow-up treatment. Dr. Butlin stated that there was no way of knowing whether the abnormality demonstrated on the MRI scan was preexisting but she thought it was unlikely. In a note dated June 15, 1994, Dr. Butlin documented appellant's treatment. Dr. Butlin's May 8, 1995 report is vague and speculative and therefore does not establish any causal connection between appellant's neck condition and factors of federal employment.<sup>4</sup> Dr. Butlin's June 15, 1994 note does not address causation and therefore is not probative. Appellant also submitted numerous hospital notes diagnosing or describing her condition, work restriction forms and physical therapy reports dated May through August 1994, many of which duplicate one another. The hospital notes do not address causation and therefore are not probative. Some of the work restriction forms which are from Dr. Butlin state that appellant's condition of cervical strain or disc protrusion are related to the April 23, 1994 employment injury but do not contain a rationalized medical opinion explaining the causal connection, and therefore are not probative. Some other work restriction forms do not address causation. Reports by physical therapists are not probative as a physical therapist is not considered a doctor within the meaning of the Act.<sup>5</sup>

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<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1974); *Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>4</sup> *See William S. Wright*, 45 ECAB 498, 504 (1994).

<sup>5</sup> *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

The Office provided appellant with opportunities to submit the required evidence but appellant did not respond. As appellant has not submitted rationalized medical evidence establishing that her neck condition is causally related to factors of her federal employment, she has failed to meet her burden of proof that she sustained an injury in the performance of duty, as alleged.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 1, 1995 is hereby affirmed.

Dated, Washington, D.C.  
February 5, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member