

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELIZABETH STANISLAV and DEPARTMENT OF VETERANS AFFAIRS,  
OMAHA VETERANS ADMINISTRATION MEDICAL CENTER, Omaha, Nebr.

*Docket No. 96-1030; Submitted on the Record;  
Issued May 26, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that her disability subsequent to August 30, 1994 was causally related to the February 22, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied her request to change attending physicians.

On February 22, 1994 appellant, then a 59-year-old clinical nursing coordinator, filed a claim, alleging that she had injured her left finger, left leg and back on that date when she slipped on stairs. She missed intermittent periods of work and stopped completely on May 9, 1994. On July 25, 1994 the Office accepted that she sustained an employment-related acute lumbar strain that had resolved as of June 11, 1994. Appellant received appropriate continuation of pay and compensation through August 30, 1994. On October 20, 1994 appellant requested that she be returned to the care of Dr. H.R. Woodward, a Board-certified orthopedic surgeon, who had treated her initially and had referred her to Dr. John M. Kalec, a Board-certified physiatrist. By decision dated November 21, 1994, the Office found that appellant had no employment-related disability after August 30, 1994. The Office also denied appellant's request to change physicians as she had failed to show sufficient justification for the change. Medical benefits were not terminated. She timely requested reconsideration and submitted additional evidence. In a December 18, 1995 decision, the Office affirmed the prior decision, finding the evidence submitted insufficient to warrant modification.

The relevant medical evidence includes a May 9, 1994 treatment note in which Dr. Woodward noted magnetic resonance imaging findings of disc desiccation and narrowing above the transitional vertebral with bulging but no herniation. In a May 17, 1994 report, Dr. Kalec diagnosed chronic lumbar strain syndrome with possible L4-5 lumbar radiculopathy on the left. He continued to submit reports and, following an Office request for information, in an August 24, 1994 report, advised that appellant was without pain and that she could begin light duty with lifting restrictions of 10 pounds and no repetitive bending, lifting or twisting. At that time he returned her to Dr. Woodward's care. In an August 30, 1994 treatment note, Dr. Woodward noted that appellant continued to be symptomatic with findings on examination and radiographic abnormalities. He advised that she was not "ready to return to any type of

work activities,” and recommended back school instructions and a work hardening program. On September 27, 1994 Dr. Woodward advised that appellant could return to two eight-hour shifts per week of light duty, which she did on October 4, 1994. On October 25, 1994 he advised that she could work three shifts, which she began that day, and in a November 8, 1994 report, advised that she could return to work without restrictions, which she did on November 14, 1994.

The Board finds that appellant established that her disability subsequent to August 30, 1994 was causally related to the February 22, 1994 employment injury.

Causal relationship is a medical issue,<sup>1</sup> and the medical evidence required to establish a causal relationship 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>2</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>3</sup> Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>4</sup>

In this case, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Woodward, appellant’s treating Board-certified orthopedic surgeon, who provided an August 30, 1994 report in which he noted findings on examination and advised that appellant was not ready to return to any type of work. He subsequently submitted a September 27, 1994 report in which he advised that she could return to part-time limited duty, which she did on October 4, 1994. Appellant, therefore, continued to be disabled after August 30, 1994 due to the February 22, 1994 employment injury and she is entitled to appropriate wage-loss compensation for such periods of disability.

The Board further finds that the Office abused its discretion in denying appellant’s request to change physicians.

Section 8103 of the Federal Employees’ Compensation Act<sup>5</sup> provides that an employee injured in the performance of duty shall be furnished with the services, appliances and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce

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<sup>1</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>2</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>3</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>4</sup> *Larry Warner*, 43 ECAB 1027 (1992).

<sup>5</sup> 5 U.S.C. § 8101 *et seq.* The Board notes that appellant requested reconsideration of the Office decision dated November 21, 1994. The Office, in its reconsideration decision dated December 18, 1995, failed to address the denial of appellant’s request to change physicians.

the degree or the period of disability or aid in lessening the amount of monthly compensation.<sup>6</sup> This section also provides that an employee may initially select a physician to provide medical services, appliances and supplies in accordance with the Office's regulations.<sup>7</sup> These regulations provide that an employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.<sup>8</sup>

The facts in this case indicate that Dr. Woodward, who initially treated appellant, referred her to Dr. Kalec who then became the physician of record. Dr. Kalec, however, returned her to Dr. Woodward for treatment. As Dr. Kalec had returned appellant to Dr. Woodward for care, the Office abused its discretion in denying appellant's request that she be returned to him for treatment.

The decision of the Office of Workers' Compensation Programs dated December 18, 1995 is hereby reversed and the case remanded for payment of appropriate wage-loss compensation benefits.

Dated, Washington, D.C.

May 26, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> 5 U.S.C. § 8103(a).

<sup>7</sup> *Id.*

<sup>8</sup> 20 C.F.R. § 10.401(b).