

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES COWAN and SOCIAL SECURITY ADMINISTRATION,
CENTER FOR HUMAN RESOURCES, Philadelphia, PA

*Docket No. 98-1778; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's cystocele and anterior colporrhaphy are causally related to her federal employment.

On May 16, 1997 appellant, a claims clerk, filed a claim asserting that her cystocele and anterior colporrhaphy were a result of her federal employment. She explained that a major portion of her job required excessive lifting, reaching, pulling and kneeling in order to file, sort, distribute, assemble, associate, batch and ship medical files. In an "Employee's Statement," appellant explained that medical files are received in boxes or folders. These files consist of all medical reports and documentation pertaining to claimants. These files are unboxed, sorted and distributed to units. Outgoing mail is boxed or sent in folders and weighed. Files are handled on a daily basis needing computer inputs, association, typing and filing, assembly and distribution. The files are housed in metal cabinets consisting of six vertical drawers. Periodically files are pulled by month for shipment, sorted, computer queried, boxed, taped, weighed for proper postage, directed to payment centers and placed with outgoing mail. Appellant explained that every aspect of her position required the handling of medical files.

On July 16, 1997 the employing establishment advised the Office of Workers' Compensation Programs that the description appellant gave of her work activity was accurate as written. The employing establishment noted, however, that the amount of lifting was minimal. Basically, appellant was required to sort and file the mail, which included medical files weighing up to five pounds. Any heavy lifting was performed by someone other than appellant. The employing establishment did not agree that appellant's work required strenuous activity in lifting and pulling of heavy files. The employing establishment provided a position description stating that there were no "unusual" physical demands.

To support her claim, appellant submitted medical opinion evidence from her attending surgeon, Dr. Joseph M. Montella, a specialist in urogynecology. In two form reports, Dr. Montella indicated that appellant's cystocele and the anterior colporrhaphy performed on

March 31, 1997 were caused or aggravated by her federal employment. In a report dated July 9, 1997, he stated: "After discussing her job description, Employee Statement, I am in agreement that her duties could have caused or aggravated her condition."

In a decision dated August 28, 1997, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by her federal employment.

Appellant requested reconsideration. She stated that she brought to Dr. Montella's attention the fact that she lifted files on a daily basis. She stated that sometimes these batched files could weigh 40 pounds or more and this could have caused her problem.

In a decision dated September 10, 1997, the Office denied appellant's request for reconsideration.

On September 20, 1997 appellant wrote to the claims examiner and advised that she was appealing the decision to deny her claim, though she later clarified that she was requesting reconsideration. She submitted additional medical evidence to support that her condition and need for surgery were causally related to her employment activity. In a report dated September 11, 1997, Dr. Montella stated as follows:

"I am writing this letter on behalf of [appellant]. She had surgery through my office for a cystocele. We had discussed about causative factors regarding this, and I do believe that her activities at work, such as lifting, pulling, kneeling and shipping large heavy medical files has contributed to her worsening of her urogenital prolapse. Part of her postoperative restrictions involves refraining from these activities, but I do believe that a causative factor in her cystocele does lie with some of the duties which she was performing. The objective findings that support this conclusion are evaluation of her prolapse that was beyond the hymen with straining as well as knowledge of the causative factors of genitourinary prolapse, including heavy lifting, straining and childbirth.

"If I can be of any further assistance to you, please do not hesitate to contact me."

The Office requested additional information from the employing establishment, including appellant's lifting requirements from November 1, 1996 to March 31, 1997, the weight of individual and batched files and how often appellant had to lift over 10 pounds in an average day.

On October 23, 1997 an operations supervisor at the employing establishment responded as follows:

"[Appellant] does not lift anything of any excessive weight and has not for as long as I can remember. I have been a supervisor in this office since 1980 and to the best of my knowledge, [appellant] has always required assistance in lifting anything weighing more than a few pounds. She would always request assistance

and was always given the assistance. This has been ongoing back to a period long before the above-mentioned timeframe.

“When the mail arrives, either the operations office, assistant manager or manager or someone else in the office will lift the baskets onto the mail table and [appellant] would then be required to open the individual envelopes and put in the proper slot for pickup in the mailroom.

“We had an office cart – similar to a shopping cart – only specifically made for office use that the clerks use for moving their mail from the mail room to their workstations. The mail is placed in this cart individually or a few pieces at a time and then removed a little at a time.

“As previously stated, any lifting of anything weighing more than a few pounds is done by someone other than [appellant] and has been for quite some time.

“As far as work requirements, [appellant] is not required to lift any heavy objects. She has been told many times by the manager to ask for assistance and she does so freely.”

The operations supervisor added that files usually weigh anywhere from a few ounces to about four to six pounds. She would not specify the weight of batched files, stating only: “We do not require [appellant] to lift or carry batches of files. She asks for help and does receive help to move any batched files.” The operations supervisor stated that to the best of her knowledge appellant never had to lift over 10 pounds in an average day. An odd folder probably could weigh up to this amount, she explained, but as previously stated the cart was available for this type of use.

On January 5, 1998 the Office prepared a statement of accepted facts and issued a decision denying modification of its prior decision. The Office found that appellant’s job did not require heavy lifting. The opinion of Dr. Montella, therefore, was not based on the accepted facts. The Office stated: “[Dr. Montella] does not appear to have an accurate understanding of what the claimant’s employment position actually entails.”

Appellant requested reconsideration. She took issue with the Office’s finding that appellant had not been required to lift anything since 1980. Appellant stated that although she had done this type of work since 1980, batched or unbatched files were handled on a daily basis requiring filing, bending, lifting and stooping. She explained that she did not seek assistance in lifting batched files until 1996, when she first became aware of her condition and when new heavier constructed files came into use.

In a separate statement, appellant stated that the development clerk handles medical files for sorting. Files are lifted to distribute. Files require lifting, stooping and reaching when filing in cabinets. She stated that since 1996, when she became aware of her condition, she did ask for assistance in lifting batched files. Her duties still require boxing and labeling files for shipment of denial folders. Outgoing mail is boxed or put in envelopes daily. Appellant stated that she asked for assistance after she became aware of her condition in 1996 when files were too heavy

after batching. She stated this was also done with incoming batched mail. Appellant stated that there was now someone who did outgoing mail, but when no one is available clerks were and are responsible.

In a decision dated May 3, 1998, the Office denied modification of its prior decision. The Office noted that its statement of accepted facts had found that appellant did not lift more than 10 pounds at a time, that individual files could weigh from 5 pounds individually to 40 pounds when batched, but that appellant did not lift or carry batches of files and that she requested and received assistance moving batched files. The Office also noted that the position description stated that there were no unusual physical demands in her job. Additionally, the Office noted that the operations supervisor had emphatically stated that appellant did not lift anything of excessive weight and had not for as long as she could remember. Finally, the Office noted that the employing establishment had earlier disagreed that appellant's work required strenuous activity in lifting and pulling of heavy files. Regarding the use of heavier folder jackets in 1996, the Office found the difference in weight to be insignificant and noted that her physician was not even aware of the difference. The Office further found that although appellant continued to maintain that she does bending, lifting and stooping, she had provided no corroborating evidence to countermand the statement of the operations supervisor. Regarding appellant's assertion that clerks were responsible for outgoing mail when no one was available, the Office deemed the statement factually incorrect as it was vague and unsubstantiated.

The Board finds that this case is not in posture for a determination of whether appellant's cystocele and anterior colporrhaphy are causally related to her federal employment. Further development of the evidence is warranted.

Appellant attributed her condition to the physical demands of her job. She supported her claim with affirmative medical opinion evidence from her attending surgeon, Dr. Montella. He explained that appellant's activities at work, such as lifting, pulling, kneeling and shipping large heavy medical files contributed to the worsening of her urogenital prolapse.

Although there is disagreement concerning the weight of the files that appellant lifted in the course of her employment, Dr. Montella's opinion is based on a largely accurate factual background. Appellant has implicated more than lifting; she has more broadly implicated the physical demands of her job, including reaching, pulling, kneeling, bending and stooping. There is no disagreement on these points. In reaching his conclusion, Dr. Montella considered appellant's job description and her "Employee's Statement," which the employing establishment advised was accurate as written, though lifting was minimal.

Dr. Montella also provided medical rationale to support his opinion. He stated that part of appellant's postoperative restrictions involved refraining from such activities as lifting, pulling, kneeling and shipping large heavy medical files, but Dr. Montella did believe that a causative factor in her cystocele did lie with some of the duties that she was performing. He explained that objective findings, as well as his knowledge of the causative factors of genitourinary prolapse, supported this conclusion. The record contains no medical opinion to the contrary.

The Office developed the factual evidence but did not give Dr. Montella the benefit of its statement of accepted facts. As a result, his opinion may be based in part on a misunderstanding of the weight appellant lifted in the course of her employment. Nonetheless, the Board finds that the evidence submitted by appellant is sufficiently supportive of her claim that further development of the evidence is warranted.¹ The Office should attempt to clarify further the lifting appellant performed in the course of her employment. Appellant responded to the statement of the operations supervisor by advising that she did not seek assistance in lifting batched files until 1996, when she first became aware of her condition and when new heavier constructed files came into use. The Office should ask the employing establishment to comment. In this regard, it is important to note that the issue is not whether the employing establishment required or directed appellant to lift batch files but whether she did in fact lift batch files in the course of her employment. Further, the issue is not whether appellant's job required excessive, unusual, heavy or strenuous lifting but whether her physical activities during the course of her employment, including but not limited to lifting, caused or contributed to her diagnosed condition. It is well established that the Federal Employees' Compensation Act² does not require the showing of unusual exertion or stress in the employment as a prerequisite for compensability. The claim is compensable if it is established that the performance of regular duties did in fact precipitate or cause the injury claimed.³

Following further development of the factual evidence, the Office shall prepare a proper statement of accepted facts, one that includes appellant's position description and the physical activities she actually performed during the course of her employment. The Office shall provide the statement of accepted facts to Dr. Montella and request that he submit a supplemental report based on the accepted facts of the case. The Office shall also request that Dr. Montella provide any additional medical rationale deemed necessary.⁴ Following development of the evidence, the Office shall issue an appropriate final decision on appellant's entitlement to compensation.

¹ See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

² 5 U.S.C. §§ 8101-8193.

³ *John J. Gallagher*, 35 ECAB 1128 (1984).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.5(b) (September 1993) ("The quality of attending physicians' reports will vary greatly. Sometimes reports are lacking in detail because the physician is unaware of the type of information required to meet our needs in a given case. If reports from the claimant's physician lack needed details and opinion, the CE [claims examiner] should always write back to the doctor, clearly state what is needed, and request a supplemental report."); see also *id.*, *Statements of Accepted Facts*, Chapter 2.809.6.b (June 1995) ("The CE may elect to assist an attending physician in formulating an opinion by providing a [statement of accepted facts] when the facts as related by the physician differ from those accepted by [the Office], or when the [Office] has evidence, such as exposure data, which is not readily available to the physician.").

The May 3, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
December 20, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member