

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA FISHER and DEPARTMENT OF THE NAVY,
NAVY AVIATION DEPOT, Cherry Point, NC

*Docket No. 98-620; Submitted on the Record;
Issued October 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty, as alleged; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

On November 26, 1996 appellant, then a 58-year-old blade and vane worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she injured her shoulders, back, upper arms and elbow in the performance of duty. Appellant stated that the soreness in her shoulders, back and arms stemmed from "unloading and loading parts from pallet to carts, pushing or carry[ing] to processing area..."¹ Appellant added that she later realized that the "moving, lifting and pulling was causing the problem." She stopped work on February 15, 1995 at 5:00 p.m. and returned to work that same day at 7:00 p.m.

In support of her claim, appellant submitted a statement describing both her job duties and how she injured her shoulders.² Appellant also submitted medical evidence in support of her claim. In a report dated March 21, 1995, Dr. James Engleman, Jr., a Board-certified family practitioner, diagnosed osteoarthritis and cervical spinal stenosis. Appellant was advised to continue performing her limited duties. On April 17, 1995 Dr. Chris Delaney performed an electrodiagnostic examination. He concluded that the examination was normal and revealed no evidence of spinal stenosis, radiculopathy, peripheral neuropathy or nerve entrapment. On April 18, 1995 Dr. Engleman diagnosed cervical strain and osteoarthritis and indicated that

¹ Appellant has filed two identical CA-2 claim forms, which were both dated November 25, 1996 and received by the Office on January 15, 1997.

² Appellant provided a report from a physician, whose name is illegible, regarding an examination performed on August 17, 1992. The physician diagnosed contusion to right knee and opined that appellant was limited to light-duty work.

appellant was capable of performing only limited duties. In an additional report dated April 18, 1995, Dr. Engleman described pain in appellant's neck, shoulders, elbows and upper arms. In the box asking whether the diagnosed condition was due to the injury, Dr. Engleman listed overuse syndrome superimposed on osteoarthritis and degenerative joint disease. He further opined that appellant was currently able to function "ok" in the light-duty job assignment. In a follow-up report dated May 19, 1995, Dr. Engleman diagnosed recurrent cervical strain and concluded that appellant could return to regular duties.

On June 9, 1995 appellant sought treatment at Cherry Point Naval Hospital for shoulder and back pain. Dr. Peter Kuers noted that appellant told him that she has recurrent problems with shoulder and arm pain after lifting and pulling things at work. He diagnosed muscle strain in shoulder and left arm. Appellant was released that day.

Dr. William A. Richey, a Board-certified radiologist, interpreted a June 13, 1995 x-ray of her cervical spine as showing prominent degenerative osteophyte formation with early disc space narrowing and mild facet arthritis. In progress notes dated June 13, 1995, Dr. Joseph R. Overby, a Board-certified family practitioner, diagnosed significant degenerative joint disease and arthritis of the cervical and lumbar/sacral spine, with pain aggravated by lifting and pulling weight over ten pounds. He recommended that appellant change jobs to the blade and vane shop so that she could work light duty. On July 11, 1996 in a workers' compensation report, appellant relayed to Dr. Overby that she got hit on the shoulder while pulling a pressure handle down. His examination revealed mild tenderness over the right acromioclavicular joint. On that same day, she was released to return to work and was told that she could perform her regular duties. In an x-ray report dated July 21, 1993, Dr. Catherine J. Everett diagnosed degenerative changes of the spine.

On July 25, 1996 Dr. Overby examined appellant and indicated that her shoulder had improved and that she could return to work. In a report dated October 22, 1996, Dr. Overby diagnosed continual pain in the left upper arm from the shoulder to the elbow and noted that the previous x-rays indicate degenerative arthritis of the cervical and lumbar spine.

On January 29, 1997 the Office requested additional information from appellant regarding the causal link between her shoulder, neck, back and arm pain and her employment. Appellant provided no new evidence.

In an April 9, 1997 decision, the Office denied appellant's claim. The Office found that although the evidence established that appellant experienced the employment factor, the evidence failed to demonstrate an injury. The Office added that appellant failed to provide evidence establishing how her degenerative arthritis in her cervical and lumbar spine was aggravated by her job.

Appellant provided a letter dated August 20, 1997 from Bruce A. More, a physician's assistant from New Bern Family Practice Center.

On September 12, 1997 appellant requested reconsideration.³

In an October 31, 1997 decision, the Office denied appellant's request for reconsideration without reviewing the merits of the claim.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an employment injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 timely filed within the applicable time limitation period 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence of existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on 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.⁷

In the instant case, it is not disputed that appellant has inflammatory disease in both of her shoulders. Appellant has submitted a statement identifying the factors of employment, which she believes caused or contributed to her shoulder, upper arm and elbow condition. However,

³ Appellant's reconsideration request was dated September 12, 1997 but not received by the Office until October 20, 1997.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

appellant has submitted no medical evidence specifically addressing whether work factors caused or aggravated her claimed condition or otherwise establishing that the diagnosed condition is causally related to employment factors or conditions. As noted above submission of such medical evidence is part of appellant's burden of proof. Although Dr. Engleman was treating appellant for overuse syndrome superimposed on osteoarthritis and degenerative joint disease, he did not provide a rationalized medical opinion, based upon reasonable medical certainty, that there was a causal connection between appellant's condition and any specific workplace factors.⁸ For example, Dr. Engleman did not provide medical reasoning explaining how her job caused or aggravated a specific medical condition.⁹ Dr. Kuers, who treated appellant at Cherry Point Naval Hospital on June 9, 1995, diagnosed muscle strain in her shoulder and left arm but also failed to provide a rationale linking her medical condition with her employment. In his June 13, 1995 progress notes, Dr. Overby diagnosed significant degenerative joint disease and arthritis of the cervical and lumbar/sacral spine, with pain aggravated by lifting and pulling weight over ten pounds. However, he also failed to indicate why work factors would aggravate her condition. Additionally, none of the x-ray reports are sufficient to meet appellant's burden of proof as they do not address the cause of appellant's conditions. As appellant has failed to present a rationalized medical opinion, appellant, therefore, has failed to meet her burden of proof in establishing fact of injury.¹⁰

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹¹ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹²

In this case, the issue is medical in nature. Thus, this letter requesting reconsideration in which appellant describes her work duties and environment is not sufficient to require a merit review as her work duties and environment are not in dispute. The only new evidence submitted by appellant was a letter from Bruce A. More, a physician's assistant, dated August 20, 1997. Mr. More stated that appellant should continue with permanent light-duty status due to significant degenerative arthritis and disc disease. However, while new, this evidence is insufficient to require a merit review of appellant's claim, as it is not competent medical

⁸ *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

⁹ *Id.*

¹⁰ *See Victor J. Woodhams*, *supra* note 6.

¹¹ 20 C.F.R. § 10.138(b)(1).

¹² 20 C.F.R. § 10.138(b)(2).

evidence since Mr. More is not a physician. Thus, the letter is not relevant.¹³ As Mr. More is not a physician, this report has no evidentiary value with regard to the point at issue and does not constitute a basis for reopening a case.¹⁴

Inasmuch as appellant failed to submit any new and relevant medical evidence or advance substantive legal contentions in support of her request for reconsideration, appellant's reconsideration request is insufficient to require the Office to reopen the claim for further consideration of the merits.¹⁵

The decisions of the Office of Workers' Compensation Programs dated October 31 and April 19, 1997 are hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹³ 5 U.S.C. § 8101(2); *Sheila Arbour*, 43 ECAB 779, 787-88 (1992).

¹⁴ *Id.*

¹⁵ *Barbara A. Weber*, 47 ECAB 163, 165 (1995)