

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE L. WALTON and DEPARTMENT OF VETERANS AFFAIRS,
BILOXI MEDICAL CENTER, Biloxi, MS

*Docket No. 99-1576; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of her federal duties.

On September 22, 1998 appellant, then a 59-year-old nurse's aid, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her left hip condition which resulted in replacement surgery was caused by her federal duties. Appellant advised she was in her position for 19 years and indicated that she had various on-the-job injuries, the last one being on February 3, 1997 in which she was injured trying to help a patient out of bed, which resulted in a lumbar lifting strain. Appellant stopped work on February 3, 1997 and returned to full duty on March 19, 1997.

In a letter dated October 19, 1998, the Office of Workers' Compensation Programs noted that the medical notes of February 1997 through August 1998 were not sufficient to make a determination on appellant's claim. It was noted that appellant returned to full duty from her February 1997 lumbar lifting strain in March 1997 and did not seek treatment for her hip condition until December 1997. Appellant was requested to submit additional medical evidence in support of her claim, including a physician's well-rationalized opinion regarding the causal relationship between her claimed condition and factors of her employment as the medical information of record indicated that appellant has a degenerative condition and lumbar scoliosis. Appellant was further requested to provide the April 22, 1998 whole body scan report and all hospital records, including admit/discharge summaries and operative reports. Past medical records relating to appellant's back and hip condition for the periods prior to February 1997 and since August 1998 were also requested.

Appellant forwarded a November 3, 1998 personal statement; witness statements acknowledging that appellant had problems with her left side of her body; Ocean Springs Hospital outpatient records, which included electromyography, nerve conduction velocity studies and x-ray reports, but no admission/discharge summary, operative report or bone scan report. In

an October 26, 1998 report, Dr. Charles J. Winters, a Board-certified orthopedic surgeon, noted that he had been treating appellant for degenerative changes in her hip and lower back. He opined that years of repetitive lifting, bending, pulling, etc. has contributed to and aggravated her arthritis.

In a January 27, 1999 decision, the Office disallowed appellant's claim for compensation benefits finding that the evidence of record failed to establish that an injury was sustained as alleged. Specifically, the Office found that the medical evidence of record failed to establish that the claimed medical condition or disability was causally related to appellant's employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 or 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 the 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 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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

It is not disputed that appellant was experiencing pain and discomfort on her left side nor is it disputed that she had workplace exposure to conditions alleged to have caused her claimed condition. However, appellant has submitted no medical evidence establishing that the claimed condition is causally related to the employment factors or conditions. As noted above, to establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant must submit rationalized medical evidence addressing how specific work factors caused or aggravated the claimed condition. The mere fact that a disease or condition develops during a period of federal employment does not establish a work-related condition.⁵ In this case, appellant has not submitted any medical evidence supporting a causal relationship between her claimed condition and her employment.⁶ The October 26, 1998 report from Dr. Winters fails to identify specific work factors, which caused or aggravated appellant's arthritis, or provide a reasoned medical opinion addressing the issue of causality. For example, he has not explained how a specific work factor would have caused or aggravated a specific medical condition nor has Dr. Winters explained why appellant's arthritis or any other diagnosed condition would be work related and not solely due to a preexisting condition, particularly considering the concurrent nonwork-related scoliosis condition with resulting severe lumbar lordosis.

Consequently, appellant has not established that she sustained an injury in the performance of duty.⁷

⁵ See *Francisco D. Regoliano*, 16 ECAB 338, 340 (1965).

⁶ The record reflects that appellant was advised to provide supportive medical evidence, but the medical evidence received was not of the quality or substance of that requested.

⁷ The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; see 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

The January 27, 1999 Office of Workers' Compensation Programs' decision is affirmed.

Dated, Washington, D.C.
August 1, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member