U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN C. CECI and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

Docket No. 99-235; Submitted on the Record;
Issued May 8, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a lower back and hip condition in the performance of duty, causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in its denial of appellant's request for reconsideration of the merits of her claim.

On August 13, 1997 appellant, then a 43-year-old flat sorting machine operator, filed an occupational disease claim (Form CA-2) alleging that her lower back and left hip pain were caused by the duties and responsibilities of her federal employment. Appellant indicated on her claim form that she initially became aware of her condition and related it to her federal employment on June 12, 1997 but she did not file a claim immediately because she did not experience pain at that time. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical treatment for her condition on June 16, 1997 from Dr. Michael Huffman, a chiropractor. Appellant stopped work on June 12, 1997 and returned on June 18, 1997.

In support of her claim, appellant submitted a duty status report received by the Office on August 15, 1997. The report is unsigned and undated and the physician's portion of the form is entirely blank.

By letter dated September 12, 1997, the Office informed appellant that the medical evidence submitted was insufficient to determine her eligibility for compensation under the Federal Employees' Compensation Act.[1] The Office requested additional medical and factual evidence from appellant and allowed 30 days for her to respond.

[1] 5 U.S.C. §§ 8101-8193.

By written response dated August 12, 1997 and received by the Office on September 17, 1997, appellant alleged that on June 12, 1997, she "felt a movement" in her lower back and left side as she pushed a hamper of mail onto the flat sorting machine conveyor belt. Appellant stated that she did not experience any symptoms related to that incident for about two weeks, at which time she felt pain in her lower back radiating to her left leg.

Appellant also submitted a note from Dr. Huffman dated July 14, 1997 and a magnetic resonance imaging (MRI) report from Dr. Harris Wasser, a Board-certified internist, dated September 8, 1997. Dr. Huffman reported on July 14, 1997 that he placed appellant on light duty to avoid exacerbating her lower back condition. Dr. Wasser's MRI report revealed, among other things, a disc bulging asymmetrically toward the left.

The employing establishment controverted appellant's claim on September 25, 1997. In support of its controversion, the employing establishment submitted a light duty or restricted assignment request form completed by Dr. Huffman on July 16, 1997, in which he stated that there was "[n]o known cause for sudden onset of lower back pain with radiation into the left upper thigh." Dr. Huffman noted that appellant would be on restricted duty for two weeks and that he treated her by chiropractic and adjunctive physiotherapy.

By decision dated October 14, 1997, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish a causal relationship between her alleged occupational disease and the implicated factors of her federal employment, therefore, fact of injury was not established.

By letter dated January 30, 1998, but not received until March 31, 1998, appellant requested reconsideration of the Office's October 14, 1997 decision denying her occupational disease claim. In support of her request for reconsideration, appellant submitted two duty status reports. The first report, undated, relates to an examination on August 13, 1997 by a physician whose signature is illegible. On the second report, dated August 25, 1997, the same doctor noted that appellant injured herself by pushing mail and that she experienced "low back pain." He indicated by a checkmark that low back pain resulted from the history she provided. Appellant also submitted a doctor's first report of occupational injury (Form 5021) from Dr. Ralph Farinella, a Board-certified family practitioner, dated August 13, 1996. Dr. Farinella diagnosed a lumbar strain and noted that appellant experienced "pain [in the] lumbar area radiating to lower extremities." On the form, appellant's description of the employment factors stated that "[she] pushed a hammer of mail (flats) onto scale. As I pushed hammer on ramp part of scale, I felt movement in lower back left side." By check mark, Dr. Farinella indicated that the diagnosis was related to appellant's description of the alleged employment incident. Finally, appellant submitted a form completed by Dr. Huffman addressing appellant's restrictions and a note from Dr. Wasser dated March 23, 1998. Dr. Wasser's note stated that appellant's MRI revealed possible L4-5 nerve root impingement and he noted appellant's 1981 right L4-5 disc diagnosis. He also stated that "[t]he patient's findings may be related to a prior injury she sustained at work."

By decision dated May 29, 1998, the Office denied appellant's request for reconsideration on the grounds that the newly submitted medical evidence was immaterial in nature and insufficient to warrant review of the prior decision. The Office denied appellant's

request "[a]fter a thorough review of the newly submitted medical evidence, in conjunction with all other information in file … [finding] that the claimant has still failed to satisfy the medical aspect of the fact of injury requirement."[2]

By letter dated July 29, 1998, appellant again requested reconsideration of her claim. In her letter, appellant expressed her belief that the Office denied her claim and previous request for reconsideration because it mistakenly relied on Dr. Huffman's notes rather than Dr. Wasser's report.

By decision dated August 12, 1998, the Office denied appellant's request for reconsideration on the grounds that the submitted evidence was repetitious in nature and irrelevant. The Office stated that Dr. Wasser's note, submitted with appellant's January 30, 1998 reconsideration request, was "speculative," and did not address whether appellant's alleged injury relates to factors of her federal employment.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a lower back and hip condition in the performance of duty, causally related to factors of her federal employment.

An employee seeking benefits under the Act[3] 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 is causally related to the employment injury.[4] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[5]

In an occupational disease claim, it must be established that a condition was sustained in the performance of duty by submitting 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.[6] The medical evidence required to establish a causal relationship between the occupational

[2] The Office purported to conduct a nonmerit review to determine whether appellant's submitted medical evidence was, in fact, new and relevant. However, this language shows that the Office conducted a merit review by weighing the probative value of the evidence of record.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

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

disease or condition and the identified employment factors is, generally, rationalized medical opinion evidence.[7] The opinion of a 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 relationship between the diagnosed condition and the employment factors identified by the claimant.[8]

There is no dispute regarding the existence of the implicated employment factors. However, in this case the Office found that appellant failed to establish a causal relationship between her diagnosed condition and the implicated employment factors in its October 14, 1997 decision. Appellant's lower back and hip condition is not disputed, but the medical evidence is insufficient to show causal relationship to the implicated employment factors.

The duty status reports submitted by appellant do not contain any medical opinion evidence concerning the nature of the relationship between appellant's occupational disease and factors of her federal employment. The first duty status report, undated, did not include a description of clinical findings or a diagnosis. The second report, dated August 25, 1997, did not contain a clear diagnosis. The MRI and accompanying report from Dr. Wasser, dated September 8, 1997 as well as Dr. Farinella's unsigned report, dated August 13, 1996 also failed to discuss causal relationship. Dr. Wasser's report is of diminished probative value because it discussed appellant's symptoms and diagnosis, but did not address the implicated employment factors. In his report, Dr. Farinella diagnosed a "lumbar strain" and indicated that his findings and diagnosis were consistent with appellant's account of her injury by checking "yes" to a form question. Without medical rationale relating the diagnosed condition to the identified employment factors, checking "yes" on a form is insufficient to establish causal relationship.[9] Therefore, Dr. Farinella's report is of diminished probative value.

Dr. Huffman's notes, one dated July 14, 1997 and the other undated, the light duty or restricted assignment request form and another form completed by Dr. Huffman are not considered medical evidence under the Act. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-rays to exist.[10] Because he did not diagnose spinal subluxation or rely on x-rays in his notes, he does not qualify as a physician and his opinion is not competent medical evidence under the Act.

As appellant has failed to submit any rationalized medical opinion evidence relating her claimed condition to factors of her federal employment, she has not met her burden of proof in establishing that she sustained a lower back and hip condition in the performance of duty causally related to factors of her federal employment.

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[7] *Id.*

[8] *Thomas L. Hogan*, 47 ECAB 323, 329 (1996).

[9] *Barbara J. Williams*, 40 ECAB 649 (1989).

[10] *Mary A. Wright*, 48 ECAB 240, 242 (1996).

The Board further finds that the Office, in its August 12, 1998 decision, properly denied appellant's request for further merit review of her claim.

In order to warrant a grant of a claimant's reconsideration request, the claimant must show that the Office erroneously applied or interpreted a point of law, advance a new legal argument supporting her claim not previously considered by the Office, or submit new and relevant evidence not previously considered by the Office.[11] Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for a merit review.[12] 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.[13] The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office does not constitute a basis for reopening a case for further review on the merits.[14]

In its May 29, 1998 decision, denying appellant's January 30, 1998 request for reconsideration, the Office acknowledged appellant's submission of a March 23, 1998 note and form completed by Dr. Huffman, two duty status reports dated August 13 and 25, 1997 and a form completed by Dr. Farinella dated August 13, 1996. Because that evidence failed to address the causal relationship between appellant's lower back condition and the employment factors, it was irrelevant and did not warrant merit review of appellant's claim. Appellant's contention that previously submitted evidence was not considered has no reasonable color of validity because the Office reviewed the case on the merits in response to appellant's first reconsideration request.[15]

[11] *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.138(b)(1).

[12] *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

[13] 20 C.F.R. § 10.138(b)(2).

[14] *David E. Newman*, 48 ECAB 305, 308 (1997)*; see Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[15] *See Norman W. Hanson*, 45 ECAB 430, 434-35 (1994).

The decisions of the Office of Workers' Compensation Programs dated August 12 and May 29, 1998 and October 14, 1997 are affirmed.

Dated, Washington, D.C.
May 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member