

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY A. GULVAS and DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE,  
Tawas City, MI

*Docket No. 99-972; Submitted on the Record;  
Issued February 21, 2001*

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DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained low back and left hip conditions in the performance of duty.

On April 13, 1994 appellant, then a 46-year-old program assistant, filed an occupational disease claim, alleging that her low back and left hip conditions were caused or aggravated by factors of employment. She stated that her job duties required her to walk on uneven surfaces in farmer's fields while carrying grain and corn samples, and to lift grain and corn samples. Appellant also asserted that her job involved computer work, which required repetitive sitting, standing, walking and bending, all of which aggravated her claimed low back and left hip conditions. In a statement dated April 13, 1994, she claimed she had fallen and injured her left hip twice in 1993.

By decision dated October 18, 1994, the Office of Workers' Compensation Programs denied appellant's claim, finding that she did not submit medical evidence sufficient to establish that the claimed conditions or disability were causally related to factors of her employment.

By facsimile dated July 28, 1995, appellant requested a review of the written record.

By decision dated October 25, 1995, an Office hearing representative affirmed the Office's October 18, 1994 decision.

By letter dated June 6, 1996, appellant's attorney requested reconsideration.

By decision dated July 9, 1996, the Office denied the claim, finding that appellant did not submit medical evidence sufficient to warrant modification.

By letter dated January 7, 1997, appellant's attorney requested reconsideration.

By decision dated January 23, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

By letter dated July 3, 1997, appellant's attorney requested reconsideration. In support of her claim, appellant submitted a February 24, 1997 deposition from Dr. Gavin I. Awerbuch, Board-certified in psychiatry and neurology. Dr. Awerbuch stated that he had been treating appellant since March 1994 and had administered several diagnostic reports, including a magnetic resonance imaging (MRI) scan, a myelogram, an electromyograph (EMG) and a computerized axial tomography (CAT) scan. On the basis of these tests, Dr. Awerbuch diagnosed lumbar herniated discs, radiculopathy and hip bursitis, and agreed that appellant's work activities caused these conditions. When asked to explain how, Dr. Awerbuch stated:

"I believe ... she had two separate incidents where she was walking in the corn stubble and told me she lost her balance and twisted and fell. Those are the type[s] of torque injuries to the spine that would cause a disc to rupture or herniate. She also performed work activities where she would bend and stoop, and twist at the hip, which would add, which would cause the bursitis of the hip. The other thing, when she was walking on an uneven surface that puts strain on the back and hips. That's another cause of ruptured disc. The work activity she described to me are definitely things which cause disc ruptures and get bursitis."

Dr. Awerbuch agreed, unequivocally, that appellant's employment aggravated her back condition to the point of herniation.

By decision dated September 19, 1997, the Office denied the claim, finding that appellant did not submit medical evidence sufficient to warrant modification.

By letter dated September 14, 1998, appellant's attorney requested reconsideration.

Appellant submitted an August 27, 1998 report from Dr. Awerbuch, who stated:

"[Appellant] has been a patient of mine since 1994. She is being treated for chronic back pain with two lumbar herniated discs, radiculopathy, sacroiliac dysfunction and trochanteric bursitis.

"[Appellant's] condition began while working as a corn appraiser and she walked on uneven surfaces in fields. She fell on two occasions and this caused her herniated disc. She was placed into a secretarial position during her recuperative period, but still had ongoing pain and developed bursitis in her hips. These falling accidents have [led] to [appellant's] current disability in terms of her lower back and hip pain."

By decision finalized October 19, 1998, the Office denied the claim, finding that appellant did not submit medical evidence sufficient to warrant modification.

The Board finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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.<sup>2</sup> 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.<sup>3</sup>

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 is usually rationalized medical 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.<sup>4</sup>

In this case, appellant has submitted medical reports from Dr. Awerbuch indicating that factors of employment had resulted in appellant's claimed low back and left hip emotional conditions. Dr. Awerbuch stated in his February 24, 1997 deposition that appellant had lumbar herniated discs, radiculopathy and hip bursitis based on several diagnostic tests, and indicated that her work activities caused these conditions. He provided a thorough explanation of how her work activities had aggravated her back condition to the point of disability, stating that she had sustained two falls at work involving torque injuries to the spine that would cause disc rupture or herniation.

Dr. Awerbuch further stated that appellant engaged in work activities where she would bend, stoop and twist at the hip, which both caused and aggravated the bursitis in her hip. In addition, he indicated that another cause of her ruptured disc was the fact that she was walking

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

on an uneven surface, putting strain on her back and hips. Dr. Awerbuch stated unequivocally that the work activities appellant described were things that caused disc ruptures and bursitis in the hips, and that appellant's employment aggravated her back condition to the point of herniation. He essentially reiterated these opinions in his August 27, 1998 report. Thus, Dr. Awerbuch sufficiently described appellant's symptoms in detail and how the employment factors would have been competent to cause her low back and left hip conditions.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the alleged low back and left hip conditions, and medical opinions that the conditions found were consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.<sup>5</sup> Although not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference that identified factors of her federal employment may have contributed to her alleged disability, and is sufficient to require further development of the case record by the Office.

On remand, therefore, the Office should refer the case to a Board-certified specialist to submit a rationalized medical opinion on whether appellant's claimed low back and left hip conditions were caused by factors of her employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated October 19, 1998 is set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, DC  
February 21, 2001

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).