

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY ANN BELL and DEPARTMENT OF THE AIR FORCE,  
ANDREWS AIR FORCE BASE, MD

*Docket No. 00-2578; Submitted on the Record;  
Issued September 10, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that her condition on and after February 5, 1994 is causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion under section 8128(a) of the Federal Employees' Compensation Act by denying appellant's request for a merit review.

This is the second appeal in this case. By decision issued February 18, 1998,<sup>1</sup> the Board affirmed a February 14, 1995 decision, of the Office finding that appellant did not establish total disability from her light-duty job on and after February 5, 1994 due to accepted factors of her federal employment.<sup>2</sup> The Board found that the January 14, 1994 report of Dr. Rajindar Sidhu, a neurosurgeon and impartial medical examiner, was sufficiently detailed and rationalized to represent the weight of the medical evidence. The law and facts of the prior decision are incorporated by reference.

During the pendency of the prior appeal, appellant submitted additional medical evidence to the Office. In a series of reports dated January 10, 1995 to February 21, 1996, Dr. Shoba Mathews, an attending neurologist, noted appellant's complaints of headaches, neck and low back pain, a November 29, 1995 myocardial infarction and hypertension. These reports do not mention work factors.<sup>3</sup>

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<sup>1</sup> Docket No. 95-1701.

<sup>2</sup> As of November 22, 1993, the Office accepted that appellant sustained a low back sprain, cervical strain with radiculopathy and aggravation of herniated discs at C3-4 and C4-5, due to moving furniture in the performance of duty on July 17, 1990. Appellant's case was placed on the periodic rolls effective November 1, 1993.

<sup>3</sup> Neurologic tests performed on December 6, 1995, including a brainstem auditory evoked response test, visual and somatosensory evoked response tests and an electroencephalograph were normal.

In a February 24, 1998 letter, appellant requested reconsideration of the Board's decision. Appellant asserted that she continued to be totally disabled for work due to the accepted July 17, 1990 injuries and that Dr. Sidhu's examination was inadequate.

By letter decision dated May 18, 1998, the Office denied appellant's request for reconsideration on the grounds that her February 24, 1998 letter did not raise "substantive legal questions [or] include new and relevant evidence."<sup>4</sup>

In a November 12, 1998 letter, appellant again requested reconsideration. She submitted additional evidence.

In an August 19, 1998 report, Dr. George Mathews, an attending Board-certified neurosurgeon, noted last examining appellant in February 1996. He related appellant's account of chronic neck and back pain radiating into the extremities, "not changed much over the years.... She has not been able to work as a result." On examination, Dr. Mathews found moderate paracervical and lumbar tenderness with limited range of motion, "2 – 3+ hyperreflexia at all sites tested with finger flexion responses," sensory changes at C6 and S1 and 4/5 strength in all extremities. He ordered neurologic studies.

In a September 2, 1998 report, Dr. Mathews noted increasing complaints in the left arm, with increased paracervical tenderness on the left, limited range of cervical motion and sensory changes in the C4 dermatome. He found that a cervical magnetic resonance imaging scan showed a "significant disc herniation at C3-4 on the left ... causing foraminal stenosis," and degenerative lumbar changes. Dr. Mathews stated that appellant was "totally and permanently disabled because of difficulties in the neck and low back."<sup>5</sup>

By decision dated May 13, 1999, the Office denied modification of the February 18, 1998 decision, on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that the medical reports appellant submitted accompanying her November 12, 1998 letter did not mention any work factors. The Office further found that appellant had "failed to submit sufficient rationalized medical evidence to establish that her medical condition on or after February 4, 1994 ... was causally related to the July 17, 1990 low back strain or other factors of her employment."

In a July 10, 1999 letter, appellant again requested reconsideration and submitted additional evidence.<sup>6</sup>

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<sup>4</sup> In a June 29, 1998 letter, the Office advised appellant that if she disagreed with the May 18, 1998 decision, she should "follow [her] appeal rights once again." Following issuance of the May 18, 1998 decision, appellant submitted copies of Dr. Shoba Mathews' reports previously of record. She also submitted medical bills from Dr. Mathews dated from July 13, 1994 to October 4, 1995.

<sup>5</sup> September 2, 1998 electromyographic testing showed "[m]ild cervical radiculopathy, maximum C5 on the right side," "[c]hronic lower lumbosacral radiculopathy" with possible "early peripheral neuropathy," and slight abnormalities in the left medial gastrocnemius and right vastus medius. A September 2, 1998 somatosensory evoked potential test of the median nerves and from L4-S1 was normal bilaterally.

<sup>6</sup> Appellant also submitted copies of medical reports previously of record and considered by the Office.

In a January 20, 1999 report, Dr. Mathews noted appellant's complaints of radiating neck and back pain, which interfered with standing and walking. He found paracervical and lumbar spasm and tenderness with limited range of motion. Dr. Mathews prescribed exercise, medication and heat and repeated that appellant was "totally and permanently disabled."

In a May 26, 1999 report, Dr. Mathews stated that appellant "sustained injuries to her neck and low back in an accident on July 17, 1990. She continued to work until 1994 but was then forced to stop working because of pain in the neck and low back. She has since suffered from these pains. Her cervical and lumbar condition are causally related to the accident of July 1990 and she is totally and permanently disabled."

By decision dated September 30, 1999, the Office denied modification on the grounds that the evidence submitted in support of appellant's July 10, 1999 reconsideration request was insufficient to warrant modification of the May 13, 1999 decision. The Office found that Dr. Mathews' May 26, 1999 report was based on an inaccurate factual history, as he stated that appellant's injuries were the result of a July 1990 "accident," whereas "the injuries of July 17, 1990 occurred when [appellant] was lifting boxes, pushing furniture and doing a lot of bending and reaching, while helping to rearrange the orderly room at work." The Office further found that Dr. Mathews did not provide "any rationale" explaining "how the injuries and disability [were] related to the accepted injuries of July 17, 1990."

In a January 5, 2000 letter, appellant again requested reconsideration and submitted additional medical evidence.

In a December 28, 1999 letter, Dr. Mathews explained that an "accident" was "a single or multiple abnormal strains to any part of the body," and that "the injury to [appellant's] spine was a result of an accident that occurred during the process lifting and moving furniture" on July 17, 1990. He offered that the Office's acceptance of the July 17, 1990 injuries should entitle appellant to permanent compensation benefits, as "spine injuries, particularly those affecting the neck and lumbar regions tend to remain unresolved for long periods of time and tend to flare up from time to time with or without provocation." Dr. Mathews reiterated that appellant's "cervical and lumbar problems are causally related to the accident of July 17, 1990 and are resulting in total, permanent disability." He commented that, it was "virtually impossible to come up with" "substantial and probative ... evidence in spine injuries, particularly of the kind that [appellant] sustained."

By decision dated April 7, 2000, the Office denied reconsideration on the grounds that, the evidence submitted was of a repetitious and immaterial nature and, therefore, insufficient to warrant a merit review of the prior decision. The Office found that in his December 28, 1999 report, Dr. Mathews merely repeated his conclusions regarding causal relationship. The Office also found that Dr. Mathews' explanation of the term "accident," and his opinions that "spine injuries ... tend to remain unresolved" and the difficulty of obtaining dispositive evidence regarding spinal injuries did not constitute new evidence supporting appellant's claim.

Regarding the first issue, the Board finds that appellant has not established that her condition on and after February 5, 1994 is causally related to factors of her employment.

Causal relationship is a medical issue,<sup>7</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>8</sup> 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,<sup>9</sup> must be one of reasonable medical certainty,<sup>10</sup> 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>11</sup>

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed condition on and after February 5, 1994 and the low back sprain, cervical strain with radiculopathy and aggravation of preexisting herniated discs at C3-4 and C4-5 sustained on July 17, 1990.<sup>12</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>13</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.<sup>14</sup>

Appellant has submitted sufficient evidence to establish that she has various pathologies of the cervical and lumbar spine, with consistent complaints of pain and difficulty with activities of daily living. The existence of these conditions and the veracity of appellant's account of her chronic pain is not at issue. What is in question is whether or not appellant's cervical and lumbar spine conditions on and after February 5, 1994 are due to the accepted July 17, 1990 injuries. However, appellant submitted insufficient rationalized evidence to establish that her conditions were caused by the July 17, 1990 injuries on and after February 5, 1994.

In support of her claim for continuing work-related disability, appellant submitted a series of reports from Dr. Mathews, an attending Board-certified neurosurgeon. However, he did not provide sufficient medical rationale explaining the pathophysiologic connection between appellant's condition on or after February 5, 1994 and the July 17, 1990 work injuries.

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<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>9</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>10</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>11</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>12</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>13</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>14</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

In an August 19, 1998 report, Dr. Mathews noted that appellant's chronic neck and back pain had "not changed much over the years. September 2, 1998 testing demonstrated a significant disc herniation at C3-4 with radiculopathy and degenerative lumbosacral disc disease with radiculopathy, which he opined were causative of appellant's symptoms.

Dr. Mathews continued to relate appellant's pain complaints in January 20 and May 26, 1999 reports and opined that she was totally and permanently disabled. In the May 26, 1999 report, he stated that appellant's "cervical and lumbar condition [were] causally related to" the July 17, 1990 incident. However, Dr. Mathews did not provide his reasons for opining that appellant's cervical and lumbar pathologies on and after February 5, 1994 were related to the accepted July 17, 1990 low back sprain, cervical strain with radiculopathy and aggravation of disc herniations at C3-5. Without such rationale, Dr. Mathews' opinion on causal relationship is of greatly diminished probative value.<sup>15</sup>

Dr. Mathews also submitted a December 28, 1999 letter, reiterating that appellant's "cervical and lumbar problems [were] causally related to the accident of July 17, 1990 and are resulting in total, permanent disability." However, instead of providing a reasoned medical explanation as to why he believed this to be true, he contended that it was "virtually impossible" to prove with certainty that appellant's continuing condition on and after February 5, 1994 was related to the accepted July 17, 1990 injuries. Dr. Mathews offered that spinal injuries such as appellant's were generally "unresolved for long periods of time," but did not specify what features or clinical findings of appellant's case supported that the July 17, 1990 injuries would cause a condition that would go unresolved for a prolonged period. Again, without a reasoned explanation setting forth how and why the July 17, 1990 injuries would cause or aggravate any medical condition on and after February 5, 1994, Dr. Mathews' conclusory support of causal relationship is of little or no value in establishing causal relationship in this case.<sup>16</sup>

Essentially, Dr. Mathews states that he believes that appellant's continuing cervical and lumbar conditions are somehow related to the accepted July 17, 1990 injuries, but he does not explain the objective medical basis for that belief. Without such supporting rationale, Dr. Mathews' opinion on causal relationship is speculation, as he offers no reasoning to support his opinion. His comment that appellant's case was "virtually impossible" to prove medically adds to the uncertain nature of his conclusions. The Board has held that medical opinions which are speculative in nature are also of diminished probative value in establishing causal relationship.<sup>17</sup>

Consequently, appellant has not met her burden of proof, as she submitted insufficient medical evidence indicating that her July 17, 1990 work-related injuries caused or aggravated any medical condition after February 5, 1994.

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<sup>15</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>16</sup> *Lucrecia M. Nielsen*, *supra* note 15.

<sup>17</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

Regarding the second issue, the Board finds that the Office properly denied appellant's request for reconsideration on its merits under 5 U.S.C. § 8128(a) on the basis that his request for reconsideration did not meet the requirements set forth under section 8128.<sup>18</sup>

Under section 8128(a) of the Act,<sup>19</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>20</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”<sup>21</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>22</sup>

In support of her January 5, 2000 request for reconsideration, appellant submitted Dr. Mathews' December 28, 1999 letter. The Board finds that this letter merely repeats Dr. Mathews' general support for causal relationship as set forth in his reports previously of record. While Dr. Mathews' letter also contains his comments about the Act's standard of proof, these remarks do not constitute new, relevant evidence in appellant's case.

Appellant's January 5, 2000 letter, also does not show that the Office committed legal error, advance a new, relevant legal argument, or contain new, relevant evidence. Therefore, the Office properly denied appellant's January 5, 2000 request for reconsideration.

The April 7, 2000 and September 30, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 10, 2001

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<sup>18</sup> See 20 C.F.R. § 10.606(b)(2) (i-iii).

<sup>19</sup> 5 U.S.C. § 8128(a).

<sup>20</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>21</sup> 20 C.F.R. § 10.606(b).

<sup>22</sup> 20 C.F.R. § 10.608(b).

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member