

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN LEE-CARTER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Memphis, TN

*Docket No. 01-2220; Submitted on the Record;
Issued April 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits constituted an abuse of discretion.

Appellant, a 40-year-old flat sorter operator, filed a notice of traumatic injury alleging that she injured her back in the performance of duty on September 17, 1997. The Office accepted appellant's claim for cervical strain, noting that strains are soft tissue injuries which normally resolve within six to eight weeks.¹

On July 26, 2000 appellant filed a claim for recurrence beginning April 2000. She stated that she was still in pain from the original injury and had been treated for pain in her legs and back since 1997. Appellant submitted notes from Dr. Ashley L. Park, a Board-certified internist, dated June 5 and July 5, 2000, stating that appellant should perform light-duty work with no repetitive lifting, bending, twisting, pulling or pushing and no lifting of more than 10 pounds. Appellant also went to the emergency room on June 21, 2000 and was diagnosed with lumbar strain. On July 27, 2000 appellant accepted a limited-duty job offer.

By letter dated December 19, 2000, the Office advised appellant that her claim for recurrence be converted to an occupational disease claim based upon the description of the injury she submitted in the CA-2a form. They informed her that the record did not contain sufficient medical evidence to support a lower back condition as an occupational disease claim.

Appellant submitted several progress reports from Dr. Park dated June 5 to December 5, 2000. On June 5, 2000 Dr. Park treated appellant for lower back and left leg pain and indicated that appellant had been experiencing pain for the past two years on the left side,

¹ The record does not contain the CA-1 form or the Office's acceptance of the claim.

with pain radiating into her buttock, thigh and calf. She noted that a May 5, 2000 magnetic resonance imaging (MRI) scan showed disc desiccation at levels L4-5. Appellant had ongoing complaints of low back pain and left lower extremity pain until December 2000. Dr. Frederick M. Azar, a Board-certified orthopedic surgeon, also diagnosed appellant with mild degenerative disc disease, lumbar spine, on May 1, 2000.

By decision dated April 9, 2001, the Office denied appellant's claim, finding that the evidence of record was insufficient to establish fact of injury. By letter dated May 22, 2001, appellant requested reconsideration but did not submit any new medical evidence. By decision dated July 19, 2001, the Office denied appellant's request for reconsideration.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵

Appellant submitted a personal statement describing the employment-related activities which contributed to the September 17, 1997 injury, the traumatic injury claim which was already accepted by the Office as work related. Appellant indicated that the heavy lifting, pushing, pulling, bending and the same repetitive continuous movements caused or contributed to her condition. It is appellant's burden of proof to establish causal relationship between her occupational disease claim and the duties of her federal employment.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

⁵ *Vicky L. Hannis*, 48 ECAB 538 (1997).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁶

In this case, appellant did not submit a rationalized medical report relating her degenerative disc disease and lumbar sprain to factors of her federal employment. Her original September 17, 1997 injury was accepted for cervical strain, which was a soft tissue injury, normally resolving within six to eight weeks. Appellant then submitted medical information diagnosing her with lower back sprain and degenerative disc disease. The Office determined that her claim for recurrence was in fact a new occupational disease injury based upon the information and diagnoses provided by her physicians. It is appellant's burden of proof to provide a rationalized medical report relating her diagnosed degenerative disc disease to specific factors of her employment. Appellant submitted several progress reports from Dr. Park from June to December 2000, but Dr. Park never discussed appellant's employment activities, nor did she relate the diagnoses to her employment. Dr. Park provided a brief history of appellant's continuing back pain over the past two years but did not opine on the cause of appellant's degenerative disc disease. Dr. Azar also treated appellant for lower back pain and left leg pain and diagnosed her with mild degenerative disc disease of the lumbar spine, but did not provide an opinion as to the cause of her condition. He also did not discuss appellant's employment or how it may have been related to her continuing lower back pain and mild degenerative disc disease. Appellant did not meet her burden of proof because she did not submit a physician's rationalized medical opinion on the issue of whether there is a causal relationship between her diagnosed condition and factors of her federal employment.

The Board also finds that the Office did not abuse its discretion in denying appellant's request for a merit review.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁷ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁸

⁶ *Supra* note 3.

⁷ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁸ 20 C.F.R. § 10.608(a).

The underlying issue in this case is medical in nature. It is appellant's burden of proof to establish causal relationship between her diagnosed degenerative disc disease and factors of her federal employment. Appellant did not submit any new medical evidence in support of her May 22, 2001 request for reconsideration. She only argued that it took over two years for her to receive a response from the Office and that the Office falsely stated that an occupational disease claim decision would be rendered in six months. These statements are irrelevant to the underlying medical issue of causal relationship and are insufficient to reopen appellant's case for a merit review.

Appellant has not established that the Office abused its discretion in its July 19, 2001 decision by denying her request for review on the merits because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The July 19 and April 9, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member