

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANNA K. COLE and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS, Springfield, MO

*Docket No. 01-1592; Submitted on the Record;
Issued May 28, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion pursuant to 5 U.S.C. § 8128 by denying a merit review.

On November 13, 1998 appellant, then a 33-year-old medical clerk, filed a claim alleging that she strained her lower back while in the performance of duty on November 12, 1998.¹

By letter dated January 19, 1999, the Office advised appellant that the information submitted in her claim was insufficient to establish that she sustained an injury while in the performance of duty on November 12, 1998. The Office requested additional information including a physician's opinion, supported by medical rationale, on the causal relationship between her disability and the incident as reported. The Office allowed 30 days for appellant to submit medical evidence and stated that her physician must explain how the work incident caused or aggravated the claimed injury.

In a report dated November 16, 1998, Dr. Patricia M. Dix, Board-certified in obstetrics and gynecology, stated that "[w]hen [appellant] went to pick up papers on or about November 12, 1998 she injured her back."

By decision dated February 22, 1999, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an injury as a result of the November 12, 1998 incident.

By letter dated March 16, 1999, appellant requested an oral hearing.

¹ Appellant was placed on continuation of pay until January 11, 1999 at which time she was placed on maternity leave.

A hearing was held on September 21, 1999. In a report dated October 13, 1998 and submitted on the record at the hearing, Dr. Dix stated that appellant related to her on a September 24, 1998 office examination that her work included pushing a cart with medical records weighing up to 400 pounds. She noted that appellant should be restricted to lifting no more than 25 pounds. In a report dated October 18, 1999, Dr. Dix stated that on November 12, 1998 appellant injured the sciatic nerve of her back when she bent over to pick up papers.

In a decision issued and finalized on December 7, 1999, the hearing representative affirmed the Office's February 22, 1999 decision denying benefits.

By letter dated October 20, 2000, appellant requested reconsideration. In support of her request, appellant submitted an October 12, 2000 report from Dr. Dix who stated:

“On November 12, 1998 [appellant] was working as a medical clerk at the [employing agency]. At the time, she was 28 weeks pregnant. [Appellant] bent over to pick up a piece of paper and immediately [began] experienc[ing] pain in her back that radiated down her leg. The pain continued, requiring bed rest for several days. She had no pain before she bent over to pick up the piece of paper and she had pain immediately upon that act.”

She further noted: “[e]xactly the mechanism of the injury is probably purely speculative and not at all within my sphere of expertise.”

By decision dated January 10, 2001, the Office denied appellant's request for modification.

By letter dated March 27, 2001, appellant again requested reconsideration. In support of her request, appellant submitted a November 16, 1998 office note from a member of Dr. Dix's staff indicating that appellant had sciatica and an unsigned treatment note dated December 15, 1998 indicating that appellant had sustained a sciatica condition.

By decision dated April 20, 2001, the Office denied appellant's request for reconsideration.

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

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 (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ 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

² *Ronald K. White*, 37 ECAB 176, 178 (1985).

³ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

diagnosed condition is causally related to the employment factors identified by the claimant.⁴ 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,⁵ must be one of reasonable medical certainty⁶ 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.⁷

In her November 16, 1998 report, Dr. Dix noted that appellant injured herself on November 12, 1998 when she went to pick up papers. In her October 13, 1998 report, Dr. Dix noted appellant's work restrictions. In her October 18, 1999 report, Dr. Dix explained that appellant had injured her sciatic nerve. In her October 12, 2000 report, Dr. Dix corroborated causal relationship between appellant's back condition of sciatic nerve injury and the work incident of November 12, 1998.

The Board notes that Dr. Dix's reports were uncontradicted by any other medical evidence of record. Her reports, while insufficient to establish that appellant's condition was causally related to her work incident, are sufficient to require further development of the medical record.

The case must, therefore, be remanded for further development. On remand the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate specialist for an examination. The specialist should provide a diagnosis of appellant's condition and give his opinion on whether appellant's condition was causally related to her November 12, 1998 work-related incident.⁸

⁴ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ In view of the Board's finding on the first issue in the instant appeal, the issue of whether the Office, in its April 20, 2001 decision, abused its discretion in denying merit review is moot.

The January 10, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
May 28, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member