

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORAINÉ MAGEE and DEPARTMENT OF THE NAVY,
NAVAL HOSPITAL, Bremerton, WA

*Docket No. 02-1404; Submitted on the Record;
Issued October 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that her claimed cervical and thoracic conditions were sustained in the performance of duty.

Appellant, a 54-year-old nurse, filed a claim for occupational disease on April 7, 1999, alleging that she developed a herniated disc at T1, lumbar radiculopathy and pains in her right hip, left knee, both arms, her neck and both hands due to factors of her employment. In a statement accompanying the form, appellant noted that she had sustained a lumbosacral strain in January 1991, which was accepted by the Office of Workers' Compensation Programs.¹ Appellant experienced pain in her lower back and in her cervical and thoracic spine for several periods since December 1991, when she returned to work on limited duty. Appellant received disability retirement from the employing establishment on December 19, 1998.

By letter dated August 18, 1999, appellant advised the Office that her job as a nurse required: lifting and opening the legs of patients undergoing child birth weighing between 120 and 300 pounds; lifting the bottom of the birthing bed while in an awkward position; moving beds from labor rooms to delivery while occupied by patients weighing between 120 and 300 pounds; restraining patients during childbirth; stooping, kneeling and bending over a tub to care for patients in labor; catheterizing patients while bending over a waist-high bed; cleaning and examining patients; and assisting patients out of bed following delivery. Appellant also related that all work areas required reaching and lifting office supplies at 2 to 12 inches from the floor.

In a report dated September 7, 1999, Dr. Joan E. Halley, an osteopath, noted appellant's history of sustaining a low back injury as of January 20, 1991, for which appellant underwent surgery in October 1991 and that she returned to work in January 1992. She stated that subsequent to this injury and surgery, appellant experienced intermittent problems with low back

¹ The claim was accepted for lumbar spinal stenosis and for surgery involving L3 to 5 decompressive laminectomy with medial facetectomies on October 8, 1991.

pain but had managed to maintain her workload. Dr. Halley stated that she treated appellant on May 29, 1998 for pain in her neck, back and left arm, at which point she was diagnosed with C8 radiculopathy. She advised that in light of the employment-related activities, as described in her August 18, 1999 letter, appellant was required to do quite a lot of lifting, bending, twisting and holding, which put significant stress on her neck, the use of her arms, as well as her low back. Dr. Halley concluded:

“Unfortunately with [appellant’s] diagnosis of osteoarthritis with degenerative disc disease of the cervicothoracic region, lumbar spine and osteoarthritis of the left knee, I feel that the work as described significantly contributes to her ongoing pain and dysfunction. It also puts her at risk for worsening.... Though she has responded to physical therapy and medications, continued employment as a labor and delivery nurse would continue to exacerbate her symptoms, worsening her neck and back pain....

By letter dated May 25, 2000, the Office accepted appellant’s claim for aggravation of low back osteoarthritis.

In a report dated April 4, 2001, Dr. Halley advised that appellant sustained three different injuries in 1997, which contributed to the herniation of the cervical/thoracic disc, which appeared to be more strain and overuse related. She stated, however, that in light of several injuries appellant experienced and her underlying degenerative disc disease, she believed that they could have contributed to a disc herniation because of pain in appellant’s neck and arm and because of the numbness radiating into her left hand.

By letter dated May 10, 2001, the Office advised appellant that the evidence she submitted was insufficient to determine whether she was eligible for compensation benefits based on a cervical/thoracic condition and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her alleged cervical and thoracic conditions. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether factors or incidents at her employing establishment contributed to her condition.

In a report dated June 6, 2001, Dr. Halley reiterated her previous opinion that appellant had problems with pain in her back as well as her neck, shoulder and left arm and that her employment activities as a nurse had exacerbated all of these complaints and contributed to her current disability in her neck and lumbar spine.

By decision dated December 4, 2001, the Office denied appellant’s claim, finding that she failed to establish that she had sustained a medical condition or disability causally related to factors of her federal employment.

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

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.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.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁵

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 appellant'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 appellant, 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 appellant.⁶

In this case, appellant has submitted supporting medical evidence, from Dr. Halley indicating that her cervical and thoracic conditions are causally related to factors of her employment. The reports from Dr. Halley address the issue of causation by stating that appellant's employment duties had contributed to her cervical/thoracic condition. Dr. Halley indicated in her September 7, 1999 report, that, in addition to her lower back pain, appellant also experienced cervical and thoracic pain and was diagnosed with C8 radiculopathy. She noted that appellant's job duties, as described in her August 18, 1999 letter to the Office, required her to do

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

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

considerable lifting, bending, twisting and holding, all of which put significant stress on her neck, the use of her arms, as well as her low back. Dr. Halley opined that this work as described significantly contributed to appellant's ongoing pain and dysfunction and advised that continued employment as a labor and delivery nurse would continue to exacerbate her symptoms, worsening her neck and back pain. She reiterated in her June 6, 2001 report, that appellant's employment activities as a nurse had exacerbated all of these complaints.

The Board, therefore, finds that the evidence is sufficient to require further development of the record.⁷ Although the medical evidence submitted by appellant is insufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference that her claimed cervical and thoracic conditions could have been caused by her employment duties and is sufficient to require further development of the case record by the Office.

On remand, the Office should further develop the medical evidence as appropriate on whether appellant's cervical and thoracic conditions are causally related to factors of her employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The December 4, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action in accordance with this decision of the Board.

Dated, Washington, DC
October 22, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ *John J. Carlone*, 41 ECAB 354 (1989).