

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN FRANK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS

*Docket No. 03-938; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she developed thoracic, cervical and lumbar conditions in the performance of duty.

On February 26, 2001 appellant, then a 50-year-old registered nurse, filed an occupational disease claim alleging that she injured her back on June 11, 1995 and September 8, 1999, while lifting and turning a patient and while she was preventing an amputee patient from falling. She stated: "The initial injuries together with repetitive stress of daily nursing duties have contributed to continual and incremental chronic disc degeneration in the cervical, thoracic and lumbar regions."¹ In support of her claim, appellant submitted a July 11, 1995 report from Dr. Frank P. Holladay, a Board-certified neurological surgeon, diagnosing cervical radiculopathy and indicating that appellant developed right shoulder and arm pain at work on June 11, 1995. In a December 18, 1996 report, he stated that appellant was lifting and turning patients and had some discomfort in her neck and that about two hours later, when she was holding a patient's arm who was struggling with her, she had severe pain in her arm. He stated: "I think based on this history that there is a causal relationship between the activities of [appellant's] work and the onset of her right arm pain." In a follow-up report dated August 26, 1997, he stated:

"As you know, [appellant] developed right shoulder and arm pain on June 11, 1995 while lifting at work. As I stated before, I believe there is a causal relationship between [appellant's] activities at work and the right arm pain. [She] underwent an MRI [magnetic resonance imaging] scan of her cervical spine, in which, a broad-based disc herniation at C5-6 and a right-sided C6-7 disc herniation was seen. When I saw [appellant], she had right triceps weakness, which would certainly correlate with a right C6-7 disc herniation, so I must state that I believe that the disc herniation is a result of her work-related injury."

¹ Appellant's claim was developed as an occupational disease claim since she filed a Form CA-2 and claimed that her injury was caused by repetitive stress and daily nursing activities; however, she noted that the specific events on June 11, 1995 and September 8, 1999 precipitated her condition(s).

In reports dated January 25 and February 1, 2001, Dr. Michael E. Ryan, a Board-certified psychiatrist and neurologist, stated that he evaluated appellant because of complaints of difficulty walking and diagnosed multiple sclerosis, spastic quadriparesis and degenerative disc disease in the cervical, thoracic and lumbar regions with overlying spinal stenosis in the cervical region. In a report dated February 12, 2001, Dr. Dennison R. Hamilton, Board-certified in preventive medicine, stated that he first examined appellant in October 2000, when she was complaining of low back pain and unsteady gait.² He stated:

“[Appellant] does have a permanent physical impairment and disability. She was previously diagnosed as having a C6-7 disc herniation directly attributable to a lifting injury while at work on June 11, 1995. [Appellant] had associated degenerative disc disease. It is my opinion that the lifting injury on June 11, 1995 aggravated a preexisting injury and caused a disc herniation at the C6-7 level. Because of that injury she has continued to experience pain and dysfunction.

“[Appellant] likewise sustained a lumbar strain on August 8, 1999 while working. The sprain was superimposed on preexisting degenerative disc disease and now her degenerative disc disease has worsened because of the substantial amount of osteophytosis in her lumbar spine. It is my opinion that the lifting injury on August 8, 1999 aggravated a preexisting condition and has resulted in continued pain and dysfunction and advancement of her spondylosis and degenerative disc disease.”³

Appellant also submitted copies of MRI reports of the lumbar, thoracic and cervical spines performed in November 2000. The reports showed cervical and lumbar disc bulges and chronic disc degeneration at multiple levels, most severe at L4-5, chronic disc degeneration at levels C5-6 and chronic disc degeneration at levels T8-9 and T11-12.

By letter dated April 9, 2001, the Office of Workers' Compensation Programs informed appellant that the factual and medical evidence of record was insufficient to determine whether her degenerative conditions were caused by federal employment factors. She did not submit any additional medical evidence. By decision dated July 24, 2001, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that her degenerative conditions were caused by federal employment factors.⁴

Appellant disagreed with the Office's decision and by letter dated August 22, 2001, requested a review of the written record and resubmitted Dr. Hamilton's February 12, 2001 report. By decision dated and finalized January 28, 2002, the Office hearing representative affirmed the previous decision.

² This report is not found in the record.

³ Although Dr. Hamilton mentions August 8, 1999 as the date of injury, the Board infers from the record that he intended to say September 8, 1999.

⁴ The Office noted that appellant should have filed a traumatic injury claim since the alleged events on June 11, 1995 and September 8, 1999 took place during a single day or work shift.

By letter dated November 4, 2002, appellant requested reconsideration and submitted an October 15, 2002 report from Dr. Charles J. Rudolph, an attending osteopath, who indicated that he had been treating appellant since February 2001 and that she continued to receive treatment for chronic disc degeneration (cdd) and associated degenerative disc disease (add) in the cervical, thoracic and lumbar regions. He stated:

“The onset of (cdd) and (add) in the cervical, thoracic or lumbar regions is generally characterized as the result of a continuing process of incremental and accruing stress damage that is attributable to a repetitive routine of a full range of physical activities that involve the cervical, thoracic or lumbar regions. Those activities would include bending, stretching and lifting and carrying or supporting weights or counterbalancing physical stresses that are disproportionately heavier or stronger in relationship to an individual’s body mass or musculoskeletal strength. The presence of (cdd) and (add) allow the cumulative effects of a routine of stress trauma in the cervical, thoracic or lumbar regions to become increasingly severe and to progressively succeed to a further and more pronounced exaggeration and acceleration of the degenerative process.

“[Appellant] has no prior history of any medical condition or physical injury or activities outside of her employment as a nurse that would be consistent with or result in (cdd) and (add) in the cervical, thoracic or lumbar regions.

“In my medical opinion, [appellant] began to experience the onset of (cdd) and (add) in the cervical, thoracic and lumbar regions, when she began the daily routine duties of a nurse. She continued to experience, with an increasing severity, the cumulative effects of (cdd) and (add) as a direct result of an ongoing process of incremental and accruing stress damage to the cervical, thoracic and lumbar regions that is directly attributable to and consistent with the repetitive routine of her daily work-related activities.

“The traumatic injuries as noted to have occurred on June 11, 1995 and on September 8, 1999 should be more accurately characterized as more pronounced or severe stress traumas. With preexisting (cdd) and (add) in the cervical, thoracic and lumbar regions, every stress trauma is to a varying degree exaggerating and accelerating the degenerative process. The instances of more pronounced or severe trauma on June 11, 1995 and September 8, 1999 were not the cause of the (cdd) or of the (add) and only incrementally contributed to the progressive nature of the degenerative process.”

By decision dated December 18, 2002, the Office denied appellant’s request, finding that the evidence submitted was insufficient to warrant modification of the January 28, 2002 decision.

The Board has duly reviewed the case record and finds that this case is not in posture for a decision and that further development of the medical evidence is warranted.

An employee seeking benefits under the Federal Employees' Compensation Act⁵ 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁷

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the 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 disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.⁸

Section 10.5(q) of the Office's regulations defines an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift."⁹ In claims not based on a specific incident, appellant must submit sufficient evidence to identify fully the particular work factors alleged to have caused the disease or condition and to show that he or she was exposed to the factors claimed; thus, appellant bears the burden of proving that work was performed under the specific factors at the time, in the manner and to the extent alleged.¹⁰ While her condition need not be caused by a specific injury or incident or an unusual amount of stress or exertion,¹¹ appellant must submit medical evidence diagnosing a specific disease or condition and explaining how identified employment factors have inflicted injury.¹²

The medical evidence required is generally rationalized medical opinion evidence, which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.¹³ Neither the fact that appellant's condition became apparent during a period of

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁸ *Jerry D. Osterman*, 46 ECAB 500 (1995); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ 20 C.F.R. § 10.5(q).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Development of Claims*, Chapter 2.800.3 (April 1993).

¹¹ *George A. Johnson*, 43 ECAB 712, 716 (1992).

¹² *Judith A. Peot*, 46 ECAB 1036 (1995).

¹³ *Victor J. Woodhams*, *supra* note 8.

employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.¹⁴

Although the medical evidence submitted by appellant is insufficient to meet her burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between her degenerative conditions in the cervical, thoracic and lumbar regions and her employment duties as a nurse and is sufficient to require further development of the case record by the Office.¹⁵

Dr. Rudolph implied in his reports that appellant's chronic degenerative conditions were caused and aggravated by repetitive work activities over a longer period than a single workday. He first explained that chronic disc degeneration and associated degenerative disc disease in the cervical, thoracic and lumbar regions is generally the result of a continuing process of stress damage and repetitive motions to these areas caused by bending, stretching, lifting and carrying or supporting something heavier than one's body mass. Dr. Rudolph stated that the cumulative effects of these routine stresses on the cervical, thoracic and lumbar regions eventually lead to an acceleration of the degenerative process.

Dr. Rudolph opined that appellant began to experience the onset of chronic disc degeneration and associated degenerative disc disease when she began "the daily routine duties" as a nurse. He opined that the cumulative effects, which were a result of an ongoing process of stress damage to these areas, were "directly attributable" to and "consistent with" the repetitive routine of appellant's daily work activities. Dr. Rudolph noted that appellant had no history of injuries and performed no activities outside of her employment as a nurse that would be consistent with or result in these conditions. He concluded his report by stating that the specific incidents on June 11, 1995 and September 8, 1999 aggravated and contributed to the progressive nature of appellant's degenerative conditions, but that they did not cause the conditions themselves.

While Dr. Rudolph indicated that appellant's disc degeneration in the cervical, thoracic and lumbar regions was caused by the repetitive duties of her position as a nurse, the Board finds that the report lacks detailed medical rationale sufficient to discharge appellant's burden of proof, but warrants further development by the Office.¹⁶ He generally explained how degenerative conditions are caused by repetitive actions of bending, stretching, lifting and carrying or supporting heavy weight and then soon after he opined that appellant first began to experience the onset of her degenerative conditions when she began her "daily routine" as a nurse. Even though he did not directly state that the repetitive duties of appellant's position caused her conditions, he did opine that her conditions appeared when she began working as a nurse and provided a clear inference that her duties included bending, stretching, lifting and carrying or supporting, which caused her degenerative conditions. Dr. Rudolph also noted that appellant performed no activities outside of her employment as a nurse that would result in these conditions. The fact that Dr. Rudolph's report contains deficiencies preventing her from

¹⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹⁵ *John J. Carlone*, 41 ECAB 354 (1998).

¹⁶ *Id.*

discharging her burden does not mean that it may be completely disregarded by the Office. It merely means that its probative value is diminished.¹⁷

Dr. Holladay opined that appellant's right arm pain was caused by lifting and turning patients on June 11, 1995 and that the disc herniation at levels C6-7 was a result of the same work-related injury. Dr. Hamilton opined that the lifting appellant did on June 11, 1995 aggravated a preexisting injury and caused a disc herniation at level C6-7. He further stated that she sustained a lumbar strain on September 8, 1999 and opined that this also aggravated a preexisting condition and resulted in the progression of appellant's spondylosis and degenerative disc disease.¹⁸ Both Drs. Holladay and Hamilton opined that appellant's injuries on June 11, 1995 and September 8, 1999 were traumatic injuries that took place in a single work shift and that aggravated a preexisting condition. Both reports also suggest two possible new traumatic injuries, however, and the issue of whether this was an occupational injury or two traumatic injuries should be clarified by the Office.

The Board finds that the medical evidence of record establishes an uncontroverted inference of causal relationship between appellant's diagnosed degenerative conditions and her federal employment. It is well established that proceedings under the Act¹⁹ are not adversarial in nature²⁰ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.²¹ After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

¹⁷ *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁸ Again, the Board infers from the record that Dr. Hamilton intended to say September 8, 1999 as the date of injury.

¹⁹ *Supra* note 5.

²⁰ *Walter A. Fundinger*, 37 ECAB 200 (1985).

²¹ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The December 18, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
August 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member