

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCY A. BOWEN and U.S. POSTAL SERVICE,
POST OFFICE, Lancaster, PA

*Docket No. 03-1033; Submitted on the Record;
Issued August 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that her neck condition is causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On June 27, 2001 appellant filed an occupational disease claim alleging that she became aware in June 1999 that she was having work-related pain in her shoulders and neck. She stated that, since the 1997 injury,¹ the repetitive movements in the neck, shoulders and back at work aggravated her condition. Appellant stated that she had surgery which consisted of a decompressive foraminotomy to treat a herniated disc at C6-7 on February 16, 2000. She stopped working on June 29, 2001 and has not worked since that date.

Appellant submitted medical evidence to support her claim including physical therapy notes her statements describing her job duties and how her condition was aggravated, disability notes, a magnetic resonance imaging (MRI) scan dated August 20, 2001 showing no new herniated nucleus pulposus and a report from Dr. Gary Gehman, a Board-certified family practitioner, noting that appellant had a C6-7 disc herniation.

By decision dated October 31, 2001, the Office denied the claim, stating that appellant had not met the requirements for establishing that her condition was caused by an employment factor.

By letter dated November 5, 2001, appellant requested an oral hearing before an Office hearing representative which was held on March 25, 2002. At the hearing, she described the August 18, 1997 employment injury, stated that she missed a lot of time "for years" due to the

¹ Appellant had a prior claim for a traumatic injury on August 18, 1997 (OWCP No. 03-229424); the Office accepted the claim for a lumbar strain.

injury and returned to light-duty work. Appellant stated that sweeping and throwing the mail sacks bothered her neck. She stated that the surgery on February 16, 2000 greatly improved her neck condition but upon returning to work, the repetitive motion of sweeping aggravated her neck.

Appellant submitted additional medical evidence. In a report dated December 20, 2000, Dr. Benjamin S. Warfel, a Board-certified psychiatrist, considered appellant's history of pain although he did not note that appellant had a work injury, performed a physical examination and diagnosed chronic pain syndrome. He stated that appellant had a "rather long history of multiple pain syndromes and problems over the past 3½ years," that she "started out" with a postpartum depression pain and then gave multiple complaints of pain which culminated in a discectomy in February 2000. In his reports dated February 8 and 16, March 16, June 2 and June 30, 2000, Dr. Daniel C. Good, a Board-certified neurological surgeon, documented that appellant had a herniated disc at C6-7 for which he performed surgery and that appellant improved after the surgery although she still had soreness around her neck. In his June 30, 2000 report, Dr. Good stated that appellant told him that on August 18, 1997 she was pushing a very heavy object and developed neck and left arm pain, the pain never subsided until the time she had surgery and that she never had the pain prior to the 1997 injury. He stated that, if appellant's statements were true, she had a work-related injury that required surgery.

In a report dated October 30, 2001, Dr. William W. Bakken, a Board-certified family practitioner, considered appellant's history of injury and performed a physical examination. He further considered that, after her surgery in February 2000, appellant returned to light-duty work, but in July 2001 she sought treatment for increasing low back pain "because her work restriction was not being properly followed and increasing stress due to the pressure of management and the conflicts that her fellow workers had with her because of the restrictions that she had." He said that he recommended that appellant apply for disability and vocational rehabilitation since he felt that the amount of lifting that appellant had to do on her job and the repetitive nature of the work was only bound to aggravate her situation. Dr. Bakken concluded that appellant's neck pain in 1999 and her current problems were directly related to work at the employing establishment.

In a report dated March 8, 2002, Dr. Bakken stated that appellant was continually disabled due to her chronic upper back and neck pain. He stated that she was unable to work and he doubted that she would be able to return to work because of the chronicity and severity of her problems.

By decision dated June 14, 2002, the Office hearing representative affirmed the Office's October 31, 2001 decision.

By letter dated September 19, 2002, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of Dr. Bakken's October 30, 2001 report.

By decision dated December 11, 2002, the Office denied appellant's request for reconsideration without reopening the claim for merit review.

The Board finds that appellant did not establish that her neck condition is causally related to factors of federal employment.

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the 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. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 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 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 appellant.²

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.³

In this case, Dr. Warfel's December 20, 2000 report that diagnosed chronic pain syndrome does not establish the requisite causation because Dr. Warfel did not address causation. He did not address whether appellant's condition was work related and therefore, his opinion is of diminished probative value.⁴ Dr. Good addressed causation only in his June 30, 2000 report and then stated that appellant had a work-related injury based on her statements that she had no pain prior to the August 18, 1997 employment injury and had pain since the injury which was relieved by the surgery. The Board has held, however, that a medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.⁵

In his October 30, 2001 report, Dr. Bakken addressed causation stating that appellant's neck pain and current problems were directly related to her work at the employing establishment. His diagnosis of appellant's condition was chronic upper back and neck pain. Dr. Bakken's opinion is of diminished probative value because pain is not a diagnosis but a symptom of a condition and as such, absent objective evidence of appellant's neck problem, is insufficient to

² See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ See *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

⁵ *John F. Glynn*, 53 ECAB _____ (Docket No. 01-1184, issued June 4, 2002). If appellant is claiming that the August 18, 1997 employment incident caused additional injuries, this would appropriately be pursued through the prior claim.

establish that appellant has a work-related condition.⁶ Moreover, Dr. Bakken did not relate appellant's neck problem to the accepted injury of low back strain. Appellant, therefore, failed to establish her claim.

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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 A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁸

In this case, the evidence that appellant submitted, to support her request for reconsideration, was Dr. Bakken's October 30, 2001 report which was contained in the record and, therefore, does not constitute relevant and pertinent new evidence not previously considered by the Office. The Office, therefore, properly denied appellant's request for reconsideration without a merit review of the claim.

⁶ See *Ruth Seuell*, 48 ECAB 188, 193 (1996); *Val D. Wynn*, 40 ECAB 666, 668 (1989); *E. Geral Lamboley*, 34 ECAB 1414, 1416 (1983).

⁷ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁸ 20 C.F.R. § 10.608(a).

The December 11 and June 14, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member