

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN V. VALOIS and DEPARTMENT OF THE ARMY,
KELLER ARMY COMMUNITY HOSPITAL, West Point, NY

*Docket No. 03-1591; Submitted on the Record;
Issued December 31, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an injury causally related to her federal employment, as alleged; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for reconsideration of the merits of her claim.

On May 21, 1997 appellant, then a 59-year-old radiology technologist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 13, 1997, while bending over to pick up a 14 by 17 cassette, turning to load it and positioning the patient, she sustained a lumbosacral strain. The employing establishment controverted the claim. By letter dated October 10, 1997, the Office accepted appellant's claim for back strain.

Appellant sought treatment from Dr. James H. Carr, a Board-certified internist. In an August 29, 1997 report, Dr. Carr listed his objective diagnoses as follows:

“Thoracolumbosacral spine sprain with clinical spinal stenosis (secondary to acute disc herniations L3-4, L4-5, L5-S1) productive of bilateral lower extremity polyradiculopathy, left more severe than right, with associated significant neuromusculo/sensory compromise.”

Dr. Carr further opined:

“[Appellant's] current medical condition is, within a quite reasonable degree of medical certainty, directly and causally related to the accident she sustained during the course of her employment on May 13, 1997 and is *not* related to any reported preexisting degenerative condition. [Appellant] has been and continues to be totally disabled from any substantial gainful employment on an objective basis since the date of her unfortunate accident and I feel her prognosis is quite guarded bearing in mind the extent of her clinical bilateral polyradiculopathic compromise to her lower extremities and the three levels of involvement with disc

herniations including significant spinal stenosis on her MRI [magnetic resonance imaging] scan.” (Emphasis in the original.)

By letter dated February 2, 1998, the Office referred appellant to Dr. John S. Mazella, a Board-certified orthopedic surgeon, for a second opinion. In a report dated February 19, 1998, Dr. Mazella diagnosed lumbosacral strain/sprain with probable left sciatic radiculopathy. He further indicated:

“With reasonable medical certainty I do not believe that a simple twisting and lifting a [seven-pound] cassette was a [competent] cause of producing the multiple disc herniations which were demonstrated on [an] MRI [scan]. I do believe a twisting episode as described by the claimant could cause a strain/sprain.”

In a February 17, 1998 report, Dr. Carr continued to opine that the accident of May 13, 1999 was directly responsible for appellant’s persisting disability.

In a medical report dated November 30, 1998, Dr. Mazella diagnosed lumbar strain/sprain without radiculopathy superimposed on underlying preexisting multiple level degenerative disc disease with symptom magnification. He opined:

“A mild, partial, orthopaedic disability was noted upon evaluation today attributable to preexisting underlying degenerative state of her lumbar spine.

“The claimant’s present mild, partial, orthopaedic disability is not causally related and is secondary to her preexisting underlying arthritic condition. There is the one possibility that her functional level is significantly greater outside a medical setting.”

In an addendum dated July 16, 1999, Dr. Mazella indicated his opinion that there were no objective findings of a causally-related injury, and that appellant’s present difficulties were secondary to her preexisting underlying arthritic condition.

In a July 14, 1999 opinion, Dr. Carr reviewed the medical evidence of record including Dr. Mazella’s reports and indicated that he continued to believe that appellant had an objective total disability on the basis of her May 13, 1997 accident.

By decision dated August 4, 1999, the Office denied appellant’s claim finding that she had not met the requirements for establishing that she had a medical condition caused or aggravated by a work-related activity. By letter dated July 17, 2000, appellant requested reconsideration. On October 5, 2000 the Office denied modification on reconsideration.

By letter dated May 20, 2002, which enclosed letters to the Office appellant wrote on September 24, 2001 and March 13, 2002, appellant requested reconsideration. Among the documents submitted with her request was a July 14, 2001 report by Dr. Carr wherein he noted that appellant continued under his periodic care for chronic post-traumatic spinal stenosis to her lumbosacral spine which by history was directly and causally related to her work accident of May 13, 1997.

After reviewing appellant's request, by letter dated August 2, 2002, the Office referred appellant to Dr. Michael Bernstein, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. Appellant's appointment was scheduled for August 21, 2002. Appellant failed to keep the appointment, and by letter dated October 12, 2002, the Office offered appellant 14 days to provide an explanation as to why she missed the appointment, and informed appellant that should she fail to provide an explanation showing good cause for her failure to keep the appointment, her entitlement to benefits would be suspended under section 8123 of the Federal Employees' Compensation Act. Appellant responded by letter dated October 21, 2002, wherein she, *inter alia*, questioned the authority of the Office to require a further medical examination.

On November 18, 2002 the Office issued a decision, wherein it indicated that although the evidence provided by appellant with her request for reconsideration was sufficient to warrant further investigation, the failure of appellant to comply with the request that she undergo a impartial medical examination effectively blocked the investigation, and for that reason, the Office denied modification of the prior decision in this case.

Appellant requested reconsideration on December 13, 2002. In support thereof, appellant submitted copies of documents already in the record. By decision dated March 17, 2003, the Office denied appellant's request for reconsideration for the reason that the information submitted in support thereof was cumulative, repetitious, or irrelevant and immaterial to the issue, and was therefore not sufficient to warrant review. The Office noted that appellant's claim remained denied.

The Board finds that appellant has not established that she sustained an injury causally related to her federal employment, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact 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.² The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.³

Rationalized medical opinion evidence is medial 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 implication 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.⁴ The mere fact that a condition manifests itself during a period of employment

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Id.*

⁴ *See Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989); *William E. Enright*, 31 ECAB 425, 430 (1980).

does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁵

In this case, the Office accepted the condition of back strain with respect to the May 13, 1997 incident. The Office did not accept any disability from work with respect to the accepted condition. Appellant submitted medical evidence, in the form of medical reports by Dr. Carr, who indicated that appellant had a disability causally related to the May 13, 1997 employment incident. The Office referred appellant to Dr. Mazella for a second opinion. Dr. Mazella disagreed, and opined that appellant's orthopedic disability was not related to appellant's employment, but rather, was secondary to her preexisting underlying arthritic condition. The Federal Employees' Compensation Act, in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁶ Accordingly, the Office referred appellant to Dr. Bernstein, to resolve the conflict in the evidence. However, appellant failed to keep this appointment, and questioned the authority of the Office to require a further medical examination. Although the evidence provided by appellant, *i.e.*, the reports of Dr. Carr, were sufficient to warrant further investigation, the failure of appellant to comply with the independent medical examination, an examination that was required due to the conflict in the medical evidence, blocked further development of the claim. Accordingly, appellant has not established by the weight of the medical evidence that her disability was causally related to her work-related injury, and the Office properly denied her benefits.

The Board further finds that the Office, by its March 17, 2003 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."⁷

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting

⁵ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

⁶ 5 U.S.C. § 8123(a); *Vaheh Mokhtarians*, 51 ECAB 190, 196 (1999).

⁷ 5 U.S.C. § 8128(a).

relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸

In her request for reconsideration, appellant does not present any new legal argument not previously considered by the Office, nor does she submit any relevant evidence not previously considered by the Office. Furthermore, appellant's request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Office properly denied appellant's request for reconsideration on the merits.

The decisions of the Office of Workers' Compensation Programs dated March 17, 2003 and November 18, 2002 are hereby affirmed.

Dated, Washington, DC
December 31, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *James R. Bell*, 52 ECAB 414 (2001); *Eugene F. Butler*, 35 ECAB 393 (1984).