

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA M. DRAWERT and DEPARTMENT OF JUSTICE, IMMIGRATION
& NATURALIZATION SERVICE, DULLES INTERNATIONAL AIRPORT, Sterling, VA

*Docket No. 02-1678; Submitted on the Record;
Issued February 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a right shoulder, neck and back injury in the performance of duty.

On January 28, 2002 appellant, then a 50-year-old immigration officer, filed a notice of occupational disease (Form CA-2), alleging that on or before January 29, 2002, she sustained right shoulder, cervical, dorsal and lumbar strains due to repetitive document stamping in the performance of duty. She also attributed the claimed conditions to an unspecified April 1999 injury, which she attributed to work factors.¹

In a February 25, 2002 letter, the Office of Workers' Compensation Programs advised appellant of the type of medical and factual evidence needed to establish her claim. The Office noted that appellant should submit her physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In a March 6, 2002 report, Dr. Linda Kirilenko, an attending Board-certified orthopedic surgeon, related appellant's account of the onset of "cervical/dorsal pain with repetitive stamping." On examination, Dr. Kirilenko found tenderness, spasm and restricted range of motion. Dr. Kirilenko diagnosed "acute or chronic cervical/dorsal strains, rule out herniated nucleus pulposus." She recommended magnetic resonance imaging (MRI) scans of the cervical and thoracic spine. In an accompanying slip, Dr. Kirilenko restricted appellant from bending, stooping, heavy lifting, prolonged standing or walking, as well as pushing, lifting and overhead use of both upper extremities, from March 6 to April 3, 2002.

By decision dated April 3, 2002, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient

¹ Appellant also submitted a notice of traumatic injury (Form CA-1). However, as appellant attributed her condition to repetitive activities over more than one work shift, the Office developed her claim as an occupational disease claim.

medical evidence addressing the alleged factors of appellant's federal employment and the claimed neck and back strains.²

The Board finds that appellant has not established that she sustained a neck, back or shoulder injury in the performance of duty as alleged.

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.³

Appellant submitted medical evidence in support of her claim from Dr. Kirilenko, an attending Board-certified orthopedic surgeon. In a March 6, 2002 report, Dr. Kirilenko related appellant's account of neck and back pain with repetitive stamping and diagnosed "acute or chronic cervical/dorsal strains, rule out herniated nucleus pulposus." In an accompanying slip, Dr. Kirilenko noted work restrictions, including no pushing, lifting and overhead use of both upper extremities, from March 6 to April 3, 2002.

Although Dr. Kirilenko identified the specific work activity of stamping, she did not explain how or why stamping would cause or aggravate any of appellant's medical condition. She did not set forth the medical basis by which stamping at work or any other of appellant's assigned duties or required training activities would cause or aggravate appellant's neck, shoulder or back conditions. Without medical rationale supporting a causal relationship between the alleged work factors and the claimed neck, shoulder and back conditions, Dr. Kirilenko's report is of little probative value in establishing causal relationship in this case.⁴

The Board notes that appellant was advised a by February 25, 2002 letter of the evidence needed to support her claim. However, she did not submit sufficient medical evidence.

Appellant has not established that she sustained any injury or condition in the performance of duty, as she submitted insufficient rationalized medical evidence to establish a causal relationship between her neck, back and shoulder complaints and any factor of her federal employment.

² On appeal, appellant submitted additional medical and factual evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time the final decision in the case was issued. 20 C.F.R. § 501.2(c). Appellant may submit this new, additional evidence to the Office accompanying a valid request for a reconsideration of her claim on the merits.

³ *Charles E. Burke*, 47 ECAB 185 (1995).

⁴ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The decision of the Office of Workers' Compensation Programs dated April 3, 2002 is hereby affirmed.

Dated, Washington, DC
February 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member