

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA C. BLYSTONE and U.S. POSTAL SERVICE,
REMOTE ENCODING CENTER, East Pittsburgh, PA

*Docket No. 03-731; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an injury in the performance of duty.

On October 25, 2001 appellant, then a 52-year-old data conversion operator, filed an occupational disease claim (Form CA-2) alleging that she developed bulging discs in her back and amyotrophic lateral sclerosis (ALS) due to sitting and typing eight hours a day. Appellant stated that she keyed eight hours a day and that sitting caused pain in her neck and back. She also stated that her right leg got ice cold, discolored and swollen. Appellant identified March 1, 2000 as the date that she first became aware of her illness. She stopped work on July 30, 2001.

In a subsequent statement dated December 13, 2001, appellant explained that her position entailed keying at a computer terminal for eight hours a day, with the exception of ergonomic breaks and more hours during the Christmas season. She indicated that she thought her condition was brought on by her position citing examples such as a fire drill that entailed walking down four flights of stairs and a trip over a wrinkle in the carpet at work which twisted her back and leg, aggravating things further.

The Office of Workers' Compensation Programs received several diagnostic reports that included magnetic resonance imaging (MRI) scans of the brain, cervical thoracic and lumbar spines and a computerized tomography (CT) scan of the pelvis. They were all normal with the exception of the July 20, 2000 lumbar spine MRI, which revealed bulging discs at L4-5 and L5-S1.

In support of her claim, appellant submitted July 3, 2000 treatment notes from Dr. Shashikala Sarma, Board-certified in internal medicine. He indicated that appellant had a drop foot of uncertain etiology and his September 20, 2001 report contained a working diagnosis of ALS.

Additionally, appellant submitted several reports from Dr. J. Stephen Shymansky, a Board-certified neurologist dated June 18, September 21 and 27 and November 30, 2001 and January 1, 2002. In his June 18, 2001 report, Dr. Shymansky indicated that appellant had motor neuron disease such as mnemonic amyotrophy or a more diffuse process that predominantly began in her right lower extremity such as ALS. He also indicated that appellant had weakness and decreased stamina and that she was impaired from her employment. In his September 21, 2001 report, Dr. Shymansky was unable to definitively state that appellant had ALS as an absolute diagnosis. In his September 27 and November 30, 2001 and January 1, 2002 reports, Dr. Shymansky treated appellant for her right ankle and diagnosed weakness and decreased stamina. He also provided a July 31, 2001 electromyogram (EMG) wherein he opined that the findings were not compatible with anterior horn dysfunction and were suspicious for motor neuron disease.

Also included was a November 28, 2001 report from Dr. Kerry R. Levin, a Board-certified neurologist, who stated that he could not provide a clean diagnosis of ALS.

In a February 8, 2002 decision, the Office denied appellant's claim for compensation. The Office found that the medical evidence was insufficient to establish that the condition was caused or aggravated by employment factors.

By letter dated March 7, 2002, appellant requested a review of the written record. She also submitted a March 6, 2002 report from Dr. Sarma who indicated that appellant had disc desiccation and degenerative changes at L1-2, L4-5 and L5-S1 and also experienced bulging discs at the L5-S1 location with progressive weakness and paresthasias of the right lower extremity. He opined that appellant had a working diagnosis of LMND and ALS was suspected but, had not been confirmed.

By decision dated November 14, 2002, the Office hearing representative vacated the February 8, 2002 decision. The Office hearing representative found that Dr. Sarma's recent report was sufficient to establish a *prima facie* case for a back condition and remanded the case for referral to a second opinion physician on the issue of whether the diagnosed lumbar disc bulge or disc degeneration were aggravated by appellant's employment activities.

On remand, the Office referred appellant to Dr. David Vermeire, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 19, 2002 report, Dr. Vermeire noted appellant's history of injury and treatment. He opined that a "definite diagnosis has not yet been established." Dr. Vermeire stated that, at the present time, all the indications were that appellant suffered from a lower motor neuron disease of an anterior horn cell nature. He indicated that there were a number of conditions to be considered including progressive muscular atrophy and amyotrophic lateral sclerosis. Dr. Vermeire noted that appellant had evidence of degenerative disc disease involving the L1-2, L4-5 and L5-S1 intervertebral discs, although there was no evidence to suggest that these degenerative disc conditions were causing the weakness and/or atrophy in the right lower extremity. Dr. Vermeire opined that there was no evidence that the weakness and atrophy in appellant's right foot and leg was caused by the prolonged sitting in her work as a data conversion operator. He stated that he knew of no evidence that would indicate her degenerative discs at L1-2, L4-5 and L5-S1 would be caused or aggravated by prolonged sitting. Dr. Vermeire stated that people who had chronic

back trouble would find it difficult to sit for prolonged periods of time; however, there was no evidence that the prolonged sitting actually caused degeneration in the lumbar spine. He opined that appellant's condition was permanent and seemed to be getting progressively worse; however, there was no evidence that any of her present symptoms were causally related to her employment or that appellant had a work-related disability. Dr. Vermeire stated that appellant would need to remain under persistent neurology observation and evaluation in an effort to determine a definitive diagnosis and subsequent treatment. On the work capacity evaluation sheet he indicated that appellant was disabled from gainful employment.

On January 3, 2003 the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant's condition was causally related to her work duties, relying on Dr. Vermeire's second opinion evaluation.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

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.¹

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based upon 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.²

In this case, the Office properly determined that appellant failed to carry her burden of proof in establishing causal relationship. The Office hearing representative found that Dr. Sarma's March 6, 2002 report established a *prima facie* case regarding whether appellant's lumbar condition was aggravated by work, thus warranting further development.

In her March 6, 2002 report, Dr. Sarma noted that appellant had degenerative changes and bulging discs and appellant's position as a data conversion operator could cause appellant's increased back pain and she made a working diagnosis of LMND and explained that ALS was suspected but not confirmed because the problem was only confined to appellant's right upper extremity with no sign of upper neuron involvement. The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *Id.*

relationship.³ While this is perhaps sufficient to establish a *prima facie* case, Dr. Sarma's report is insufficient to satisfy appellant's burden of proof.

Dr. Vermeire, the second opinion physician, whom the Office relied upon, provided a rationalized opinion. He noted appellant's history of injury and treatment and agreed that no definite diagnosis had yet to be established. Dr. Vermeire was of the opinion that appellant suffered from the lower motor neuron disease of an anterior horn cell nature and degenerative disc disease. He opined that there was no evidence that appellant's degenerative disc conditions were causing weakness in her right lower extremity or that her condition was caused by her position as a data entry operator. Dr. Vermeire indicated that there was no evidence that appellant's condition was causally related to her employment.

Appellant also submitted reports from Drs. Shymansky and Levin, however, they did not contain any definite opinion with respect to appellant's diagnosis or causal relationship.

The Board finds that the weight of the medical evidence is represented by Dr. Vermeire's report. He provided the only opinion that offered an explanation regarding appellant's condition and he provided a definitive diagnosis that her condition was of an anterior horn cell nature and that she had degenerative disc disease. Dr. Vermeire explained that there was no evidence that this was caused by her employment. Since the medical evidence submitted does not establish a causal relationship between appellant's claimed condition and her employment, appellant has not met her burden of proof in establishing her claim. In the absence of a rationalized medical opinion stating that appellant's condition was causally related to her employment, the Board finds that appellant is not entitled to compensation.⁴

³ *Arthur P. Vliet*, 31 ECAB 366 (1979).

⁴ The Board notes that, subsequent to the Office's February 12, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

The January 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member