

caused by her employment on November 8, 2003. Appellant notified her supervisor on November 12, 2003 but did not stop work.

In support of her claim, appellant submitted a November 12, 2003 report from Dr. Donald C. Manuele, her treating osteopath, who placed her on light duty with a lifting restriction of no more than 30 pounds.

By letter dated November 26, 2003, the Office advised appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a decision dated January 8, 2004, the Office denied appellant's claim on the grounds that she failed to submit sufficient medical evidence to establish that she sustained a medical condition caused by factors of her employment.

LEGAL PRECEDENT

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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.¹

ANALYSIS

The only medical evidence before the Office at the time it issued its January 8, 2004 decision was the November 12, 2003 report from Dr. Manuele, a treating osteopath, who placed appellant on light duty with a 30-pound lifting restriction. However, Dr. Manuele did not provide a diagnosis nor did he relate any medical condition to her federal employment activities. As noted above, part of appellant's burden of proof is the submission of reasoned medical evidence addressing whether employment factors caused or aggravated the claimed condition. Although the Office notified appellant regarding the kind of evidence she needed to support her claim, she failed to submit sufficient medical evidence to establish that she sustained a medical condition caused by factors of her federal employment. Without such evidence, appellant has not met her burden of proof.²

¹ *Solomon Polen*, 51 ECAB 341 (2000).

² The Board notes that this case record contains evidence submitted to the Office subsequent to its January 8, 2004 decision. Further, on appeal, appellant submitted new evidence to the Board. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit new evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a medical condition caused by factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member