United States Department of Labor
Employees' Compensation Appeals Board

LINDA-LOU M. CLARK, Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, TAMPA INTERNATIONAL AIRPORT, Tampa, FL, Employer	)	**Docket No. 04-1736** **Issued: December 14, 2004**

Appearances:
Linda-Lou M. Clark, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 29, 2004 appellant filed a timely appeal from a February 20, 2004 merit decision of the Office of Workers' Compensation Programs which denied her claim, and a May 13, 2004 decision in which the Office denied her request for a review of the written record. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of employment; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On September 5, 2003 appellant, then a 56-year-old security screener, filed a Form CA-1, traumatic injury claim, alleging that on August 23, 2003 she sustained inflammation of muscles and a herniated disc while bending and lifting in the performance of her federal duties.

On August 29, 2003 the employing establishment authorized treatment at Tampa General Hospital. Medical reports that day include an unsigned discharge summary and a work release form signed by a nurse indicating that appellant could return to work when cleared by a neurosurgeon.[1] An x-ray of the lumbar spine was interpreted by Dr. Rajendra Kedar, a Board-certified radiologist, as negative, and a magnetic resonance imaging (MRI) scan of the lumbar spine was read by Dr. J. Kevin Potthast, also Board-certified in radiology, as demonstrating a left lateral L3-4 disc herniation.

Appellant submitted additional medical evidence including a September 3, 2003 letter in which Dr. Thomas H. Harrison, a Board-certified neurologist, advised that appellant was evaluated for low back problems. He noted that he had seen appellant in May 2001 for degenerative changes and a disc protrusion with pain in her cervical spine and right upper extremity. The physician reported a history of chronic low back pain of a few years duration and a job history of working on a slant and standing on her feet all day long. He stated that "for the past week or so her back pain has been more severe" and "last Friday" (August 29, 2003) her back went into a spasm and she was sent to Tampa General Hospital in an ambulance. He stated that appellant had improved but continued to have low back and tailbone pain and pain and weakness in her legs with no true sciatic pain. Dr. Harrison reviewed the August 29, 2003 MRI scan and advised that it demonstrated early degenerative disease at the L3-4 and L4-5 levels and some lateral bulging at L3-4 which did not significantly impinge on the neural foramen or spinal canal and a nerve root cyst in the sacral area on the right. Dr. Harrison diagnosed early degenerative spondylosis of the lumbosacral spine with facet arthropathy, asymptomatic incidental nerve root sleeve cyst in the sacrum, and a severe attack of lumbago "triggered by above plus being on her feet all day long." He concluded that appellant should not work on a sloping floor and should be able to use a stool and change positions frequently. In an unsigned treatment note dated September 17, 2003, Dr. Harrison noted appellant's continued complaints of pain and advised that she could not work for two weeks. In an unsigned treatment note dated October 1, 2003, the doctor advised that appellant had improved and could return to work.

In an unsigned treatment note dated October 21, 2003, Dr. Joseph A. Laguna, an internist, reported a history that appellant "injured her lower back at work in August" and noted her care by Dr. Harrison. He stated that appellant had continued complaints of pain despite physical therapy and medication. The physician diagnosed lower back pain with questionable lumbar radiculopathy. By report dated November 11, 2003, Dr. Laguna reiterated his diagnosis and advised that appellant had improved.

[1] The record does not indicate if or when appellant stopped work.

By letter dated October 27, 2003, the Office authorized medical care for office consultation through December 22, 2003.[2] In a January 7, 2004 letter, the Office informed appellant that the evidence submitted was insufficient to establish her claim, noting that the medical evidence did not refer to a traumatic injury occurring on August 23, 2003. She was asked to respond to specific questions provided and submit a physician's opinion explaining how the reported injury resulted in the diagnosed condition.

Appellant thereafter submitted additional medical evidence including duplicates of evidence previously of record and physical therapy treatment notes. Dr. Harrison submitted disability slips dated September 15 and 17, 2003 advising that appellant could not work. In an October 1, 2003 report, the physician advised that appellant suffered from degenerative disc disease in her lumbar spine with arthritis. He stated that she was recovering from a severe attack of lumbago but could return to work on October 5, 2003 with restrictions that she work on a flat surface and be permitted to sit on a stool occasionally while working.

Appellant also submitted records from Tampa General Hospital describing her care on August 29, 2003. In a history and physical report, Dr. Catherine Carrubba, Board-certified in emergency medicine, reported a history of gradual worsening of low back pain over the previous week with no discrete trauma and noted physical findings of bilateral leg weakness. A discharge summary signed by a nurse noted a diagnosis of herniated disc. Appellant also enclosed a copy of the January 7, 2004 Office letter but did not provide answers to the questions asked.

By decision dated February 20, 2004, the Office denied the claim. The Office accepted that the claimed incident occurred on August 23, 2003 but found the medical evidence of record insufficient to establish that her back condition was caused by the work incident. In a letter postmarked April 2, 2004, appellant requested a review of the written record and submitted a March 17, 2004 report from Dr. Harrison. In a decision dated May 13, 2004, an Office hearing representative denied the request on the grounds that it was untimely filed.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

[2] The authorization was sent to "Dr. Solomon's office." The record does not contain any medical reports from this provider.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical 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 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS -- ISSUE 1

The Board finds that, while the August 23, 2003 employment incident occurred, appellant failed to meet her burden of proof to establish that this incident caused her low back condition. As stated above, in order to establish her claim that she sustained an employment injury, appellant must submit rationalized medical evidence explaining that her condition was caused by the August 23, 2003 incident.[9] This she did not do.

On January 7, 2004 the Office informed appellant of the type evidence needed to support her claim, to include a physician's report explaining how the reported injury caused her condition. She was also asked to submit answers to a list of specific questions provided by the Office. While appellant submitted a number of medical reports, she did not provide answers to the questions asked by the Office.

Regarding the reports appellant submitted that were signed by a nurse, reports from a nurse cannot be considered probative medical evidence as a nurse is not a "physician" under the Act and thus cannot render a medical opinion on causal relationship.[10] Appellant also submitted

[5] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *Leslie C. Moore*, *supra* note 7.

[10] *Vincent Holmes*, 53 ECAB ____ (Docket No. 00-2644, issued March 27, 2002); *Vicki L. Hannis*, 48 ECAB 538 (1997).

a lumbar spine MRI scan and x-ray reports dated August 29, 2003. These, however, do not contain an opinion regarding the cause of appellant's condition, and medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship[11]

In the history and physical report dated August 29, 2003, Dr. Carrubba provided a history of worsening back pain and specifically stated that there was no discrete trauma. Dr. Carrubba did not provide a diagnosis and did not relate any of her findings to the August 23, 2003 employment incident. In his reports dated October 21 and November 11, 2003, Dr. Laguna noted a history that appellant injured her back at work "in August" but did not provide a specific date or describe the work incident. Furthermore, he did not provide any opinion regarding the cause of her condition. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[12] Thus, the opinions of Drs. Carrubba and Laguna are of diminished probative value and insufficient to meet appellant's burden.[13]

Dr. Harrison provided reports in which he noted a history that appellant's pain became severe on August 29, 2003 and generally advised that her condition was due to being on her feet all day long at work. He, however, provided no further explanation or referenced the August 23, 2003 employment incident, and the Board has long held that medical reports not containing rationale on causal relationship are entitled to little probative value.[14]

Appellant also submitted a March 17, 2004 report from Dr. Harrison with her request for a review of the written record. The Board cannot consider this report, however, as its review of the record is limited to that evidence which was before the Office at the time of its final merit decision,[15] which in this case was February 20, 2004.

The medical reports provided by appellant are thus inconsistent with the history of injury she provided in her claim form. As appellant failed to submit rationalized medical evidence explaining that her condition was caused by the August 23, 2003 employment incident, she therefore failed to establish that her claimed back condition was causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[13] *Michael E. Smith, supra* note 11.

[14] *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[15] 20 C.F.R. § 501.2(c).

date of the decision for which a hearing is sought. If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right.[16] The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[17]

ANALYSIS -- ISSUE 2

In this case, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. In its May 13, 2004 decision, the Office stated that appellant was not, as a matter of right, entitled to a written record review since her request, postmarked April 2, 2004, had not been made within 30 days of its February 20, 2004 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application. As appellant's request for a review of the written record was postmarked April 2, 2004, more than 30 days after the date of issuance of the Office's prior decision dated February 20, 2004, the Office was correct in stating in its May 13, 2004 decision that appellant was not entitled to a review of the written record as a matter of right as her request was untimely filed.

While the Office also has the discretionary power to grant a request for a written record review when a claimant is not entitled to such as a matter of right, the Office, in its May 13, 2004 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether she established her claim could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[18] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a back condition causally related to factors of employment. The Board further finds that the Office did not abuse its discretion in denying her request for a review of the written record.

[16] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[17] *Id.*

[18] *See Claudio Vazquez*, 52 ECAB 496 (2001); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 13 and February 20, 2004 be affirmed.

Issued: December 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member