

**United States Department of Labor
Employees' Compensation Appeals Board**

MYRTLE J. FORD-SEXTON, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Kansas City, MO, Employer)

Docket No. 03-2299
Issued January 26, 2004

Appearances:
Myrtle J. Ford-Sexton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On September 12, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On June 15, 2001 appellant, then a 46-year-old health technician, filed an occupational disease claim alleging that she sustained an injury to her back, right knee and hip and suffered from swollen ankles as a result of the walking, pulling and lifting she performed in her federal employment. On August 21, 2001 she filed an electronic occupational disease claim, again alleging injuries to her hip, leg, back, feet and right knee.

In support of her claim, appellant submitted a March 14, 2000 note from Dr. Karen A. Ryan, a Board-certified internist, wherein she noted that appellant had been having back problems for six months. She indicated that appellant's magnetic resonance imaging (MRI) scan showed that she had a bulging disc and that she had right lower extremity sciatica. Dr. Ryan further noted that appellant had to lift a patient and hurt her back when it happened.

In a November 22, 2002 note, Dr. Mark Lee, appellant's treating family practitioner, indicated that appellant has been his patient since April 1999 and that her working diagnosis was discogenic and radicular back pain as well as mild arthritis contributing to the chronic low back pain. He also indicated that she had intermittent mild sacroilitis. Dr. Lee further noted that "over the last year, [appellant] has also developed intermittent debilitating knee and ankle pain as well as some swelling in her right hand.... [Appellant] states that her hand, knee and ankle pain is directly related to the amount of time she spends on her feet." Dr. Lee further noted:

"It is my opinion that [appellant] currently suffers from chronic low back pain from several etiologies as well as undiagnosed arthritis of the knees, ankles and possibly hands. We have tried many medical interventions for her low back pain and at this time have nothing more to offer her except pain medications and lifestyle modification. My opinion is in regards to her knee and ankle pain a similar conclusion will be made. Therefore, the most significant thing we can do for [appellant] at this time is to modify her work environment and activity level as well as modify her medications to give her a reasonable quality of life. I do not expect that [she] will recover completely from these conditions, but this is something that she will have to manage daily for the rest of her life."

By decision dated November 7, 2001, the Office denied appellant's claim for the reason that the medical evidence failed to establish the relationship between the employment factors and the medical condition.

On December 31, 2001 appellant requested reconsideration. In her request, she provided further details with regard to her work duties. Further medical evidence was also submitted. This evidence included progress notes dated from June 14, 1999 through January 11, 2002, by Dr. Lee and his associates. These notes indicate that appellant was treated for multiple musculoskeletal complaints. In a medical report dated December 11, 2001, Dr. Lee indicated:

"My impression of [appellant's] ongoing back and leg complaints is that in 1992 she had a precipitating event that led to the beginning of a long course of back pain. She states at this time [that] she was lifting at work. [Appellant's] back pain really has not significantly improved, in fact has worsened since that time to now, we have progression of her disease process over the last eight years. In reviewing her records, when she would see specialists they would always recommend light duty, no lifting and restrictions of bending. [Appellant] has informed me that her work as a health technician requires that she do a lot of walking, walking up and down stairs, bending, lifting, repetitive standing and sitting. I believe all of these activities directly contributed to the progression of her back pain over the last eight to nine years. Subsequently the ongoing back pain directly influenced the changing of [appellant's] gait to where she developed

significant tendinitis around the ankle as well as the knee. Also, [she] has developed degenerative changes with chronic knee effusion on her right knee related to her ongoing work and ongoing abnormal gait.

“I want to be very clear in stating that I believe based on what [appellant] has reported to me as well as my physical exam[inations] and evaluation of her tests that the incident in 1992, precipitated this long course of abnormalities, her work conditions that required bending, at times lifting, walking up and down stairs, were directly correlated with progression of her back, ankle and knee problems over the last eight years.”

Dr. Salanski, an associate of Dr. Lee, indicated that appellant had chronic back pain even in childhood.

In a March 5, 2002 note, Dr. David J. Clymer indicated that he discussed the possibility of surgery with appellant. With regard to causation, he indicated:

“[Appellant] works as a health technician [with] the [employing establishment] and this is at times very repetitive. She does a lot of lifting and bending. There apparently has not been a specific accident or injury at work which has been reported in the past. I have explained I really cannot specifically relate this to degenerative disc process to work activities although certainly every activity both at work and at home will contribute to degenerative change and to the extent that the work does involve repetitive bending or lifting that is at least a contributing factor. Whether or not this rises to the level of being a work-related condition or not I think it is difficult to say. At this point, I do not think I have sufficient evidence to make that conclusion myself. On the other hand, it sounds as though her symptoms are worsened by repetitive bending and lifting at work and if there is the possibility for some restriction with regard to those activities as Dr. Lee has recommended in the past I think that would be appropriate.”

Dr. Clymer repeated his opinion regarding causation in his report of March 5, 2002.

By decision dated March 15, 2002, the Office reviewed appellant’s request on the merits. However, the Office found that appellant failed to provide medical evidence based on a complete and accurate history of injury addressing causal relationship and differentiating between the effects of the underlying condition and her previous exposure to work factors.

On March 22, 2002 appellant again requested reconsideration. She submitted no new evidence and by decision dated July 3, 2002, the Office denied reconsideration without conducting a merit review.

Appellant again requested reconsideration on September 25, 2002. She submitted letters by friends and family commenting on her back condition and newspaper articles. By decision dated December 3, 2002, the Office denied modification of its prior decision.

On March 17, 2003 appellant again requested reconsideration and submitted further medical evidence. On April 18, 2002 Dr. Clymer performed a decompressive laminectomy and discectomy of L4-5 and decompressive laminectomy of L5-S1 on the right. Other medical evidence submitted included x-ray reports and lab test results from the time appellant was in the hospital for this surgery.

Dr. Lee also submitted a note dated January 24, 2003 wherein he indicated:

“I have been caring for [appellant] since 1999. Over the last four years I have seen her deteriorate both mentally and physically. [She] currently has multiple musculoskeletal problems which include bilateral carpal tunnel, coccydynia, recurrent synovitis of the knee and ankles, sacroilitis and degenerative joint disease of the lumbar spine resulting in radiculopathy. I think [appellant’s] work requirements have contributed to the chronicity of those problems. I certainly believe that a disability evaluation is warranted in [appellant’s] case.”

Appellant submitted a February 17, 2003 report by Dr. Stephen C. Salanski, the associate of Dr. Lee’s, who had formerly noted that appellant had childhood back pain. Dr. Salanski reported:

“I spoke with [appellant] on February 1, 2003. She feels that I misunderstood or misinterpreted her comments at that initial visit. Since it is almost four years later, I have no direct recollection of that discussion. It is possible in a physician-patient discussion, as in any conversation between two people, that there could be a misunderstanding. It would seem impossible now to prove or disprove that statement. It does seem unreasonable, however, to expect [appellant] to prove a negative by providing medical records from physicians who treated her earlier in life to substantiate that she had not received prior treatment for a back condition.

“[Appellant] is currently under the care of one of my partners, Dr. Lee, who feels that her multiple musculoskeletal medical problems, including her back problems, are significantly related to her work requirements. Further, she has never mentioned childhood back problems to him. He and I both agree that even if [appellant] had childhood back pain, the current symptoms are related to more recent back and musculoskeletal injuries -- and to deny the disability on this basis does not fit the current medical evidence in this case.”

By decision dated May 22, 2003, the Office determined that the medical evidence in the record was devoid of a well-rationalized medical opinion which based upon a correct history of exposure explained how appellant’s employment duties caused or contributed to her diagnosed orthopedic condition. Therefore, the Office denied modification of its earlier decisions.

LEGAL PRECEDENT

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 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 the 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ 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 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 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.⁵

An award of compensation may not be based on surmise, conjecture or speculation or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁶ However, proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.

¹ 5 U.S.C. §§ 8101-8193.

² *Thomas L. Hogan*, 47 ECAB 323 (1996).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *see also Ruthie M. Evans*, 41 ECAB 1143, 1145 (1989).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ *Id.*

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷

ANALYSIS

In the instant case, the evidence submitted by appellant, while insufficient to meet her burden of proof that she sustained an injury causally related to her federal employment, is sufficient to require further development of the evidence. Dr. Clymer indicated that there had not been a specific accident or injury at work and that it was difficult to say whether appellant had a work-related condition. Dr. Salanski indicated that appellant's current symptoms were related to recent back and musculoskeletal injuries, however, he did not state specifically what those injuries were. However, Dr. Lee indicated that appellant's work requirements contributed to the chronicity of her problems. He specifically noted that appellant's work conditions, which required bending, lifting and walking up and down stairs, directly correlated with the progression of her back, ankle and knee problems. Although Dr. Lee's opinions are insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship, they are sufficiently consistent, detailed and rationalized to warrant further development by the Office.⁸

CONCLUSION

Under the circumstances described above, the Board finds that this case must be remanded. On remand, the Office shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist or specialists to obtain a detailed well-rationalized opinion regarding any causal relationship between the identified work factors and appellant's physical condition. Following this and any other development that the Office deems necessary for a proper adjudication of the case, the Office shall issue an appropriate decision.

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ *John J. Carlone*, 41 ECAB 345, 358 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 22, 2003 and December 3, 2002 are vacated and this case is remanded for further consideration consistent with this opinion.

Issued: January 26, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member