

By letter dated July 30, 2003, the Office asked appellant to submit additional information, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed back and neck injury.

In a decision dated September 4, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.

On September 21, 2003 appellant requested a review of the written record and submitted a December 4, 2002 report from Dr. Thomas E. Helbig, an orthopedic surgeon, who noted a history of her injury in April 2002 and diagnosed cervical and lumbosacral sprain. He noted positive physical findings upon examination of the cervical and lumbosacral spine. A May 18, 2003 x-ray of the spine revealed mild diffuse degenerative changes and a bulging disc at C5-6 and C6-7. In a September 23, 2003 report from Dr. Alan B. Clark, a Board-certified internist, who diagnosed cervical spondylosis and noted that appellant could not stand or walk for long periods of time. In a work capacity evaluation, he diagnosed cervical spondylosis and advised that appellant could return to work subject to various restrictions. An October 28, 2002 attending physician's report from Dr. James T. Cort, a Board-certified internist, diagnosed cervical spondylosis and lower back syndrome and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. He further noted that she injured her back when she was bending over to catch a patient that was falling.

In a decision dated November 10, 2003, an Office hearing representative remanded the case for further development of the medical evidence. The hearing representative noted that the record contained an adequate history of injury; however, appellant's treating physicians failed to provide a rationalized medical opinion as to how the diagnosed conditions of cervical and lumbosacral sprains and spondylosis were causally related to her April 11, 2002 work incident.

By letter dated January 13, 2004, the Office asked appellant to submit additional information, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed back and neck injury.

Appellant submitted a statement describing her work injury and subsequent pain in her back and neck. Employing establishment medical records from April 15, 1997 to August 8, 2002 were submitted, which noted appellant's treatment in April 2002 for a back injury sustained while she was assisting in transferring a patient to his bed. An x-ray of the spine dated April 17, 2002 revealed no abnormalities. In an April 19, 2002 work capacity evaluation prepared by Dr. Soonjae Yook, a Board-certified internist, diagnosed cervical, neck and back pain and spasms and noted that appellant could return to work subject to various restrictions. Dr. Cort, in a report dated July 23, 2002, diagnosed lumbar back pain and advised that appellant was totally disabled from July 16 to July 28, 2002. Dr. Helbig's report of January 27, 2004 noted a history of appellant's injury of April 2002 and diagnosed cervical and lumbar sprains. He opined that her injuries were directly related to the incident of April 2002.

In a decision dated March 1, 2004, the Office accepted that appellant sustained cervical and lumbosacral strains in the performance of duty. However, the Office denied appellant's claim for cervical spondylosis. The Office noted that her treating physician did not provide a detailed report explaining how her cervical spondylosis condition was causally related to the work injury of April 11, 2002.

In a letter dated March 8, 2004, appellant requested reconsideration, but did not submit any additional evidence. She indicated that Dr. Clark diagnosed cervical spondylosis and she believed that this was a work-related condition.

By decision dated April 15, 2004, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions, nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.¹

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³

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 reasonable medical certainty and must be supported by medical rationale explaining the nature of

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *Michael E. Smith*, 50 ECAB 313 (1999).

³ *Id.*

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an injury when she was assisting to transfer a patient to his bed. The Office found that the incident occurred on April 11, 2002 and that this resulted in the accepted conditions of cervical and lumbosacral strains. However, the Office found that appellant did not establish that the employment injury caused cervical spondylosis.

The Board finds that the medical evidence is insufficient to establish that appellant developed cervical spondylosis causally related to her accepted April 11, 2002 injury. The medical records submitted most contemporaneously with the date of the alleged injury, specifically Dr. Cort's note of July 23, 2002, diagnosed lumbar pain and advised that appellant was totally disabled from July 16 to 28, 2002. However, he failed to reference the April 11, 2002 nor did he diagnose cervical spondylosis. This report does not support the claimed causal relationship. In an attending physician's report dated October 28, 2002, Dr. Cort diagnosed cervical spondylosis and lower back syndrome and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and noted that she injured her back when she was bending over to catch a patient that was falling. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ Therefore, this report is insufficient to meet appellant's burden of proof.

Also submitted were reports from Dr. Helbig dated December 4, 2002 and January 27, 2004 and Dr. Yook dated April 19, 2002. The physicians noted a history of appellant's injury in April 2002 and diagnosed cervical and lumbosacral sprain and spasms; however, neither physician diagnosed cervical spondylosis as a result of the April 11, 2002 injury. A medical report that does not contain such opinion is insufficient to meet appellant's burden of proof.⁷

A report from Dr. Clark dated September 23, 2003, diagnosed cervical spondylosis and noted that this condition prevented appellant from standing or walking for long periods of time. In a work capacity evaluation dated December 11, 2003, Dr. Clark diagnosed cervical spondylosis and advised that she could return to work subject to various restrictions. However, Dr. Clark did not state that appellant's condition was work related, nor did he provide a

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁷ See *Michael E. Smith*, *supra* note 2.

rationalized opinion regarding the causal relationship between her cervical spondylosis condition and the April 11, 2002 injury.⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

Also submitted were employing establishment nursing notes which indicated that appellant was treated from April 16 to August 8, 2002 for a back injury sustained while she was assisting to transfer a patient to his bed. However, treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under the Act.⁹ Therefore, these reports are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹² which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the (Office); or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

⁸ *Id.*

⁹ See 5 U.S.C. § 8101(2) (this subsection defines a “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

¹⁰ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

Appellant's March 8, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration advised that Dr. Clark diagnosed cervical spondylosis and noted her belief that her condition was caused by the accepted injury. However, appellant's request was not accompanied by any report from Dr. Clark and her letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with her reconsideration request.

The Board finds that the Office properly determined that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her December 2, 2003 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she developed cervical spondylosis causally related to her April 11, 2002 employment incident and that the Office properly denied appellant's request for reconsideration.

¹³ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the April 15 and March 1, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member