

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

DEDRA T. KENNEDY, Appellant

and

**U.S. POSTAL SERVICE, OAKLAND MAIN
POST OFFICE, Oakland, CA, Employer**

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**Docket No. 04-1842
Issued: November 22, 2004**

Appearances:
Hank Royal, for the appellant
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 July 15, 2004 appellant timely filed an appeal from a March 31, 2004 decision by the Office of Workers' Compensation Programs which denied appellant's request for reconsideration of the November 5, 2003 decision of the Office hearing representative. In the November 5, 2003 decision, the Office hearing representative found that appellant's occupational injury claim, filed on June 18, 2002, was identical to her March 4, 2000 traumatic injury claim in which her compensation was terminated effective July 6, 2001. The Office hearing representative therefore dismissed appellant's claim for compensation. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an occupational injury due to factors of her federal employment; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On June 18, 2002 appellant, then a 40-year-old mail handler, filed a claim for an occupational injury. Appellant explained that her job required her to push and pull heavy equipment, lift heavy mail trays, and lift and throw packages into a general purpose carrier and that she was required to twist, bend, lift mail, and push and pull heavy trays of mail. As a result of these employment duties, she stated that she had acute and chronic cervical strain, strain of the shoulder girdle, neck and low back sprain, and a small herniation of the L5-S1 disc. She commented that she did not have the low back pain, or other conditions such as stiffness, limited range of motion and chronic pain before March 4, 2000.

In an October 18, 2002 letter, the Office indicated that the material submitted in appellant's claim was insufficient to support her claim because there was no medical evidence to support her claim that the work activities in March 2000 caused a work-related back condition. The Office asked appellant to submit information on the job activities which she believed contributed to her condition and describe the development of the claimed condition. Appellant was also asked to submit a comprehensive medical report from her treating physician describing her symptoms, results of tests and examinations, diagnosis of her condition, and the physician's reasoned opinion on whether her work activities contributed to her injury. The Office also requested all medical reports from 2000 to support her orthopedic back condition claim.

In an October 24, 2002 report, Dr. Borina Dramov, a neurologist, stated that appellant, as a part of her work, often bent, lifted, pushed and pulled mail. She indicated that appellant gradually developed pain across the lower back, radiating into her buttocks, which became more prominent and caused increasing pain in 2000. Dr. Dramov commented that appellant's pain was made worse by bending, twisting, pushing and pulling. Regarding appellant's examination findings, she noted that a March 20, 2001 magnetic resonance imaging (MRI) scan revealed a small subligamentous disc bulge at the L5-S1 level with a mild impression on the thecal sac, consistent with an early L5-S1 herniated disc. She reported that appellant had tenderness over the L4-5 lumbar area. Dr. Dramov diagnosed a lumbar sprain with a small L5-S1 herniated disc, work related on a cumulative basis.

In a November 14, 2002 letter, appellant indicated that she first became aware of her back condition on March 4, 2000 immediately after the injury occurred.¹ She stated that the condition had been continuous and that her symptoms included stiffness in the neck and back, weakness in the right shoulder, shooting pain in both legs, limited range of motion, muscle spasms, headaches, weakness, loss of balance, fatigue and poor circulation. Appellant commented that her condition became worse with sitting, standing, prolonged laying down, reaching above the shoulder, prolonged bending, twisting, carrying heavy items, exposure to cold air, climbing stairs and prolonged walking. She also submitted numerous medical reports relating to her claim for a traumatic injury on March 4, 2000.

In a January 10, 2003 decision, the Office indicated that appellant had previously filed a claim for a traumatic injury which occurred on March 4, 2000. The Office noted that her claim

¹ On March 4, 2000 appellant was hit in the head by a bar on a general purpose carrier, knocking her to the ground.

was denied on July 6, 2001, based on a March 30, 2001 report from Dr. Thomas D. Schmitz, a Board-certified orthopedic surgeon, who found no evidence of a work-related condition and released her to full duty. In further evaluating the evidence, the Office found that appellant had submitted medical evidence previously considered under her traumatic injury claim for the March 4, 2000 employment injury; while the medical evidence supported that appellant had a traumatic injury and her claim for a cervical condition was denied. The Office further found that appellant's small disc bulge was not established as work related since she was not performing any work activities at the time it was diagnosed. Finally, the Office concluded that appellant's claim was denied because she had not established a causal relationship between her medical condition and factors of her employment.

In a February 7, 2003 letter, appellant requested a hearing before an Office hearing representative, which was conducted on August 20, 2003. In a November 5, 2003 decision, the Office hearing representative affirmed the Office's decision on the grounds that appellant's claim was a duplicate of her March 4, 2000 traumatic injury claim and she had not established that she sustained a new occupational injury.

In a February 4, 2004 letter, appellant requested reconsideration. She submitted a January 10, 2003 report from Dr. H. Geoffrey Watson, a Board-certified internist, who made an extensive review of the medical evidence of record. He concluded that appellant's problems consisted of head trauma, which psychologically revealed a post-traumatic stress disorder; cervical disc disease, likely related to the head trauma; right shoulder and arm discomfort likely associated with the cervical disc disease; lumbosacral disc disease, possibly associated with work; ongoing pain, likely associated with appellant's head trauma and injury; and ongoing exacerbated depression associated with the nonresolution of her physical and psychological pain.

In a March 31, 2004 decision, the Office denied appellant's request for reconsideration, finding that the evidence submitted, Dr. Watson's report, was irrelevant and could not alter the final determination in appellant's case because appellant's claim had been denied on the basis that it was a duplicate of her traumatic injury claim previously filed.

LEGAL PRECEDENT -- ISSUE 1

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 (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ 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

² See *Ronald K. White*, 37 ECAB 176, 178 (1985).

³ *Jerry D. Osterman*, 46 ECAB 500, 507 (1995); *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁴ *George V. Lambert*, 44 ECAB 870, 876-77 (1993); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

required to establish 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,⁵ must be one of reasonable medical certainty,⁶ 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

ANALYSIS

The Office hearing representative affirmed the Office's January 10, 2003 decision on the grounds that her claim was a duplicate claim arising from the same injury. The Board notes that appellant's June 18, 2002 claim specifically indicated that appellant attributed her back condition to the constant bending and twisting required in her job. The March 4, 2000 traumatic injury claim concerned appellant's cervical condition and right arm condition. Although there is some evidentiary overlap in the present case with the traumatic injury claim, the claims are distinct, different claims. The Office hearing representative therefore erred in affirming the denial of appellant's claim on the grounds that it was a duplicate claim.⁸ The Board will therefore base its review on the underlying January 10, 2003 decision which found appellant had not established an occupational injury in the performance of duty.

The evidence of record establishes that appellant has a back condition, including a small L5-S1 herniated disc. Appellant has described the factors of her employment which she contends caused her back condition. The only medical report of record which addresses appellant's claim of an occupational injury to her back was the October 24, 2002 report of Dr. Dramov. In that report, Dr. Dramov noted that appellant had pain across her back and noted the small disc bulge at L5-S1 that was pressing on the thecal sac. She stated that the findings were consistent with an early L5-S1 herniated disc. Dr. Dramov diagnosed a lumbar sprain with a small herniated L5-S1 disc. She stated that the condition was work related on a cumulative basis. Dr. Dramov, however, gave no explanation on how the employment factors cited by appellant would have caused her back condition. She did not describe how the employment factors would cause appellant's back pain over two years after the March 4, 2000 employment injury. Dr. Dramov also did not discuss how appellant's back condition prior to March 4, 2000 would have caused the L5-S1 herniated disc that was found on an MRI scan one year later. Her report, therefore, has limited probative value and is insufficient to satisfy appellant's burden of proof.

⁵ *Derwood H. Nolin*, 46 ECAB 818, 821-22 (1995); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 217-18 (1997); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *Arturo A. Adams*, 49 ECAB 421, 425-26 (1998).

⁸ The Board, at this time, does not address whether an occupational injury claim can be denied on the grounds that it is identical to a traumatic injury claim that previously has been denied by the Office.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹¹

ANALYSIS -- ISSUE 2

The Office denied appellant's request for reconsideration on the grounds that Dr. Watson's report was irrelevant because it did not pertain to the Office hearing representative's decision finding that appellant's June 18, 2002 claim was a duplicative claim. As noted above, the Board has found that the June 18, 2002 occupational injury claim was a distinct, different claim from appellant's March 4, 2000 traumatic injury claim. The Office therefore based its March 21, 2004 reconsideration decision on the wrong premise of the relevant issue in this case. Furthermore, Dr. Watson described his impression of appellant's condition and stated that her lumbosacral disc condition was possibly associated with work. Dr. Watson's report addresses the real issue in this case, whether appellant's back condition was causally related to factors of her employment. As this report constitutes new, relevant evidence, the Office should have conducted a merit reconsideration of appellant's claim.

CONCLUSION

The Office properly found that appellant has not established that her back condition was causally related to factors of her employment. The Office, however, did not properly reconsider the merits of appellant's case even though appellant had submitted new medical evidence relevant to the issue of the causal relationship between appellant's back condition and her work activities. The case must therefore be remanded for further development, followed by a *de novo* decision.

⁹ 20 C.F.R. § 10.608(b).

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the hearing representative of the Office of Workers' Compensation Programs, dated November 5, 2003 be modified to find that appellant had not established that she sustained an occupational injury to her back causally related to factors of her employment and affirmed as modified. The reconsideration decision of the Office, dated March 31, 2004, is hereby set aside and the case remanded for merit review.

Issued: November 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member