United States Department of Labor
Employees' Compensation Appeals Board

MIRIAM GONZALEZ, Appellant	)	
and	)	**Docket No. 05-784**
	)	**Issued: July 12, 2005**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
Ed Malinowski, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 17, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 23, 2004 merit decision denying her occupational disease claim. She also filed a timely appeal from the Office's January 10, 2005 nonmerit decision denying her reconsideration request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 23, 2001 appellant, then a 38-year-old mail handler, filed an occupational disease claim alleging that she sustained a herniated disc and sciatica due to the duties of her job.

Regarding the cause of the injury, she stated, "When I first started working I was in perfect health. Throughout the years working in trans [sic] has aggravated my condition." She indicated that on December 12, 1999 she first became aware of her condition and its relationship to her employment.[1]

Appellant submitted the results of magnetic resonance imaging (MRI) scan testing from June 2001 and December 2002 which indicated that she had multiple disc herniations in her cervical and lumbar spines.

By letter dated May 14, 2003, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

By decision dated June 13, 2003, the Office denied appellant's occupational disease claim on the grounds that she did not establish the existence of any employment factors. The Office stated that appellant did not identify the particular work duties which she believed caused her claimed condition.

Appellant requested a hearing before an Office hearing representative which was held on January 22, 2004. She testified that between 1998 and mid 2001 she performed the regular duties of a mail handler and that between mid 2001 and her work stoppage in December 2003 she performed light duties. Appellant asserted that between 1998 and mid 2001 she was required to sort mail, load and unload mail from trucks, lift mail sacks weighing 70 pounds, and push and pull mail containers weighing over 600 pounds. She claimed that she sustained conditions which caused neck, back and upper extremity pain due to performing these duties.

Appellant submitted a January 15, 2004 report in which David Treatman, an attending Board-certified family practitioner, indicated that she was "under my care for injuries sustained on August 29, 2002.[2] He indicated that appellant was first seen for back pain in July 1998 after engaging in heavy lifting and that the condition resolved with naproxen and rest. Dr. Treatman stated that appellant was treated on December 12, 1999 for back pain after she engaged in lifting heavy bags, pushing and pulling mail containers, and loading and unloading trucks. He indicated that these actions "contributed to the development of her condition" and noted that MRI scan testing showed cervical disc herniations and foramina narrowing. Dr. Treatman stated that appellant had other episodes of pain related to lifting and bending during 2000 and 2001 and developed neck pain in April 2001. He noted that each time her condition improved with

[1] The file number for the present claim is 02-2037997. Appellant has filed other claims which are not the subject of the present appeal. The Office denied appellant's claim that she injured herself while lifting at work on December 12, 1999 (file number 02-770836). The Office accepted that appellant sustained a right elbow contusion while she was getting out of a mail truck on August 29, 2002 (file number 02-2028632). Appellant claimed that she sustained a recurrence of disability due to this injury on November 25, 2002 and the Office denied her claim on March 19, 2003. She filed another claim on April 15, 2003 but the Office determined that it duplicated her November 25, 2002 recurrence claim.

[2] He noted that appellant reported falling off a truck and striking her left elbow on the side of the truck as well as "jarring her entire body." As previously noted, it was accepted that appellant sustained a right elbow contusion on August 29, 2002.

analgesics and physical therapy and stated that she was able to continue working most of the time.

Dr. Treatman further indicated that since August 29, 2002 appellant's back and neck pain became more severe and occurred more frequently. He noted that appellant attempted to work but experienced severe episodes of pain which sent her to the emergency room. He stated, "She continues to experience severe pain which makes it impossible for her to work in any capacity." Dr. Treatman indicated that appellant's diagnosis was cervical and lumbar radiculopathy and noted that she was unable to perform any lifting, bending, pushing or pulling. He stated:

> "In my opinion, the accident on August 29, 2002 in which [appellant] fell from a postal truck caused further injury to her spine thus causing her current increase in the intensity, frequency, and duration of her pain. Her past work duties which included lifting heavy bags, pushing and pulling mail containers, and loading and unloading trucks contributed to the development of this condition in the first place."[3]

By decision dated and finalized March 23, 2004, the Office hearing representative affirmed the June 13, 2003 decision. The Office hearing representative found that appellant had established the existence of employment factors which she believed caused her condition by identifying the duties of her job between 1998 and mid 2001 including sorting mail, loading and unloading trucks, lifting mailbags weighing 70 pounds, and pushing and pulling mail containers weighing over 600 pounds. However, he found that appellant did not submit sufficient medical evidence to establish that she sustained a medical condition due to these factors.

In October 2004 appellant requested reconsideration of her claim and submitted a September 2, 2004 report of Dr. Treatman, who stated that he was clarifying his prior reports. He noted that appellant first developed back pain in July 1998 after lifting, pushing and pulling bags and boxes of mail weighing about 60 pounds. He indicated that the pain resolved with analgesics and rest and that the pain recurred and was more severe after she lifted heavy bags at work in December 1999. Dr. Treatman indicated that an MRI scan from March 2000 showed herniated lumbar discs which he believed were caused by lifting, pushing and pulling heavy bags and boxes of mail. He indicated that appellant continued to lift heavy items and her symptoms increased after an August 29, 2002 incident which he felt caused additional injury to her spine. Dr. Treatman stated that he believed appellant's underlying lumbar spine disease was also caused by lifting, pushing and pulling heavy bags and boxes of mail at work since November 1997.

By decision dated January 10, 2005, the Office denied appellant's reconsideration request.

[3] Appellant submitted a February 20, 2004 report of Dr. Treatman which contains almost the same language as his January 15, 2004 report. The report additionally indicated that MRI scan testing showed degenerative lumbar disc disease, greatest between L4-5 and L5-S1. She also submitted MRI scan testing from January 2004 which showed degenerative disc disease of the lumbosacral spine.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of 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.[5] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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 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. The medical evidence required to establish a causal relationship 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 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]

ANALYSIS -- ISSUE 1

Appellant has established the existence of employment factors in the form of engaging in sorting mail, loading and unloading trucks, lifting mailbags weighing 70 pounds, and pushing and pulling mail containers weighing over 600 pounds between 1998 and mid 2001. However, she did not submit sufficient medical evidence to establish that she sustained a medical condition due to these factors.

Appellant submitted January 15 and February 20, 2004 reports in which Dr. Treatman, an attending Board-certified family practitioner, discussed her factual and medical history. In portions of these reports, Dr. Treatman discussed employment incidents on specific dates that are

[4] 5 U.S.C. §§ 8101-8193.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[7] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

not the subject of the present occupational disease claim. For example, he discussed employment incidents which occurred on December 12, 1999 and August 29, 2002 and which have been considered separately by the Office under different claim files.[8] In the January 15 and February 20, 2004 reports, Dr. Treatman indicated that appellant was first seen for back pain in July 1998 after engaging in heavy lifting and that the condition resolved with naproxen and rest. But he did not provide any clear opinion that appellant sustained a diagnosed condition due to specific employment factors at that time.

Dr. Treatman indicated that, in addition to the fact that appellant sustained spinal injury on August 29, 2002, her "past work duties which included lifting heavy bags, pushing and pulling mail containers, and loading and unloading trucks contributed to the development of this condition in the first place." However, this opinion is considered of limited probative value due to its vague nature and its lack of medical rationale supporting the stated conclusion.[9] Dr. Treatman did not identify any particular condition which was caused by these tasks; nor did he provide any details about when they were performed and the frequency that they were performed. Moreover, he did not provide the findings of any particular physical examinations to support his conclusions or otherwise explain the medical processes through which the accepted work duties could have caused specific injury to appellant. For these reasons, the medical evidence from Dr. Treatman is not sufficient to establish appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[10] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

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[8] *See supra* note 1. In particular, Dr. Treatman suggested that the August 29, 2002 incident caused significant damage to the spine. The Office has only accepted that appellant sustained a right elbow contusion on August 29, 2002.

[9] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(2).

[12] 20 C.F.R. § 10.607(a).

[13] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

In support of her timely October 2004 reconsideration request, appellant submitted a September 2, 2004 report of Dr. Treatman. However, the September 2, 2004 report is duplicative of the January 15 and February 20, 2004 reports of Dr. Treatment which were already considered by the Office. Dr. Treatment provided a similar account of appellant's factual and medical history and he provided similar descriptions of symptom flare-ups that occurred in July 1998, December 1999 and August 2002.[14] The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[15]

Appellant has not established that the Office improperly denied her request for reconsideration of its March 23, 2004 decision, because the evidence she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[14] Dr. Treatman again indicated that an August 29, 2002 incident caused damage to appellant's spine and asserted that her lifting, pushing and pulling duties also contributed to her condition.

[15] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 10, 2005 and March 23, 2003 decisions are affirmed.

Issued: July 12, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member