

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

AUGUSTA R. GARRICK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

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**Docket No. 04-777
Issued: May 6, 2005**

Appearances:
Augusta R. Garrick, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 30, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 11, 2003, denying her request for reconsideration of a July 11, 2003 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the July 11, 2003 decision, denying her claim for disability for intermittent dates between April 8, 1991 and September 6, 2001 and the December 11, 2003 denial of reconsideration decision.

ISSUES

The issues are: (1) whether appellant established that her disability on intermittent dates between April 8, 1991 and September 6, 2001 was causally related to her April 6, 1991 employment injury; and (2) whether the Office properly refused to reopen her case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 16, 2001 appellant, then a 42-year-old mail processor, filed an occupational disease claim alleging that on April 6, 1991 she developed asthma and bronchitis¹ due to her job.

On July 30, 2002 the Office accepted appellant's claim for exacerbation of bronchitis, aggravation of asthma and a nasal infection.

On September 9, 2002 appellant filed a claim for compensation for intermittent dates of disability between April 8, 1991 and August 4, 2001. She submitted time analysis forms dated September 28, 2002 for intermittent dates of disability through September 6, 2002.² In letters dated October 15, 2002 and July 11, 2003, the Office accepted certain intermittent dates of disability between April 8, 1991 and August 14, 2001.

By decision dated July 11, 2003, the Office denied appellant's claim for compensation for disability on intermittent dates between April 8, 1991³ and July 5, 2001.⁴ It stated that a total of 682 hours of lost pay had been accepted for certain dates between April 8, 1991 and August 1, 2001, because those dates were supported by medical evidence that reflected the time lost from work was the direct result of her accepted respiratory conditions. The Office stated that the remainder of the dates claimed were not accepted because the medical evidence indicated only that appellant was disabled and the "nature of illness or injury" block on the form was left blank and did not support that those disability dates were a direct result of her accepted medical conditions.

By letter dated October 22, 2003, appellant requested reconsideration.

By decision dated December 11, 2003, the Office denied appellant's request for reconsideration on the grounds that she had not presented new and relevant evidence or legal argument not previously considered by the Office.

¹ Appellant subsequently added the condition of sinusitis to her claim.

² These time analysis forms included some dates of disability that were not addressed in the July 11, 2003 Office decision and letters dated October 15, 2002 and July 11, 2003: August 12, 1992, April 17 to 18, 1996, December 14 and 22, 1998, March 26 to April 1 and May 25 to 27, 1999, January 1 to 4 and December 26 to 28, 2000, March 8 and 31 to April 27, May 31, June 24, August 17 to 30 and September 5 and 6, 2001. There is a July entry on one of the time analysis forms for 16 hours with illegible days of the month.

³ It is clear that the date April 8, 1990 in the first paragraph was meant to be April 8, 1991.

⁴ Although the Office indicated on the first page of its decision that it was denying appellant's disability claim for intermittent dates from April 8, 1991 through July 5, 2001, the second page of the decision indicates the denial of compensation for dates between January 18, 1991 and August 15, 2001. It is unclear why January 18, 1991 is the beginning date for claimed dates of disability on the second page of the decision as appellant's accepted employment injury occurred on April 6, 1991 and her claim was filed for intermittent dates beginning April 8, 1991.

LEGAL PRECEDENT -- ISSUE 1

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such causal relationship. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and 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.⁵

ANALYSIS -- ISSUE 1

Appellant claimed compensation for intermittent dates between April 8, 1991 and September 6, 2001 as causally related to her April 6, 1991 employment injury. For certain claimed dates of disability, there is either no medical evidence of record, the medical evidence indicates disability for work due to conditions not accepted as causally related to appellant's April 6, 1991 employment injury or the evidence submitted for the dates was not signed by a physician: all dates of disability claimed in 1991 through 1994, dates of disability claimed between 1995 and 2001 with the exceptions indicated below. Therefore, the Office properly denied appellant's claim for compensation for these dates.

The Board notes that for several of the dates of disability denied by the Office, the medical evidence of record indicates that the disability on those dates was due to an accepted condition, asthma: August 8 to 9, 1996, November 16, 2000, February 20 and 22 and September 5 to 6, 2001 or the medical evidence is the same as medical evidence for dates of disability accepted by the Office; in 1996: April 2 and 17 to 18, May 2 to 3, June 28, July 10 to 11, August 22, September 4 to 6 and 20, October 3 to 4 and 18; in 1997: April 18, May 2, 4, 16, 19, 28 and 30, June 2, 10 to 11, 23 to 24, 27, July 9, 23, 25, 28 to 29, August 7-8 and 11, September 5 and 19, October 3, 17, 20 and 30, November 14 and 25 to 27, December 10 and 15; in 1998: January 7 and 20 to 23, February 6 to 11 and 17 to 18, March 2 to 3 and 15 to 16, April 27 to 29, May 4 to 5, 12 to 15, 18 to 19 and 29, June 11 to 12, July 10 to 15, August 1, 6, 20 and 25, September 4, 10, 13 and 18, October 1 to 2, 28 to 29, November 3, 23 to 26; in 1999: January 6, 11 to 12, 14 to 15 and 20 to 21, February 8, March 25, April 2, 8, 14 to 15 and 29 to 30, May 12 to 13, 17, 19, 25 and 27, June 9 to 16 and 23 to 28, August 5 to 6 and 10, September 3 to 7, 13 to 16 and 30, October 4 to 5 and 28 to 29, November 22 to 23 and December 12; in 2000: January 1 to 4, April 27 to 28, May 1 to 5 and 19 to 22, June 23 to 26 and 28 to 29, July 7, 12 to 24 and 26 to 31, August 22 to 23, 25 and 30, September 6, October 2 to 4 and December 1 to 7. The medical evidence for these claimed dates of disability consists of disability certificates, with no medical condition indicated, signed by Dr. John J. Upchurch, a family practitioner. The following dates of disability were accepted by the Office and the medical evidence of record for these dates also consists of disability certificates, with no medical

⁵ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

condition indicated, signed by Dr. Upchurch: April 16, 1996, February 15, 1997, December 28, 1998, March 1 to 4, April 2 and June 17, 1999. It is unclear why the Office accepted certain dates of disability and denied other dates based on the same medical evidence. Therefore, further development is required by the Office to determine whether any of these claimed dates of disability were causally related to appellant's April 6, 1991 employment injury or the accepted conditions, exacerbation of bronchitis, aggravation of asthma and a nasal infection.

The record shows that the Office has accepted dates of disability, for which the medical evidence indicates the conditions of rhinitis and sinusitis:⁶ October 20, 1994, May 24, 1995, April 16 and September 19, 1996, October 31, 1997, January 22, 1999, September 12, October 11 and December 15, 2000 and June 22, 2001. There is medical evidence for the following denied dates of disability which indicates that appellant was seen for rhinitis and sinusitis: June 27, 1995, April 24, June 22 to 25, 1998 and February 2 to 8 and August 21, 2001. There is no explanation as to why the Office accepted certain dates of disability for the conditions of sinusitis and rhinitis but not others. On remand, the Office should resolve these inconsistencies.

Additionally, there are two inconsistencies in the Office's July 11, 2003 decision regarding the dates for which compensation was not paid. The Office's July 11, 2003 letter indicates that compensation was paid for March 31 and July 26 2001, but the July 11, 2003 decision indicates that compensation was denied for those two dates. On remand, the Office should resolve these inconsistencies.

CONCLUSION

The Board finds that this case requires further development regarding appellant's compensation claim for certain intermittent dates between April 8 and September 6, 1991. On remand, the Office should determine whether any of the claimed dates of disability addressed above were causally related to her April 6, 1991 employment injury or the accepted conditions, exacerbation of bronchitis, aggravation of asthma and a nasal infection.⁷

⁶ The Office has not specifically indicated that rhinitis and sinusitis are accepted as related to appellant's 1991 employment injury.

⁷ Given the Board's disposition of the merit issue in this case, it is not necessary to consider the nonmerit issue of whether the Office, in its December 11, 2003 decision, properly denied appellant's request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 11 and July 11, 2003 are set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: May 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member