

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

DENISE T. HORTON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1381
Issued: May 12, 2005**

Appearances:
Dr. Jerrell E. Woolridge, JD, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 28, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs January 20, 2004 nonmerit decision denying her request for reconsideration of December 22, 2003 decision, which denied her request for modification of a July 29, 2003 decision. The July 29, 2003 decision denied appellant's claim on the grounds that she failed to establish that she sustained a condition in the performance of duty causally related to her employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that her back condition was sustained in the performance of duty causally related to factors of her employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 7, 2003 appellant, a 41-year-old mail carrier, filed an occupational disease claim alleging that on March 11, 2003 she first realized her back and lower extremity problems were employment related, *i.e.*, resulting from carrying mail, ascending and descending steps.

In a letter dated May 19, 2003, the Office requested additional factual and medical evidence and allotted 30 days for a reply. Appellant did not reply within the time allotted.

By decision dated July 29, 2003, the Office denied her claim on the grounds that she failed to establish that her claimed condition was causally related to the accepted events as required for coverage under Federal Employees' Compensation Act.

On November 12, 2003 the Office received an October 30, 2003 attending physicians (Form CA-20) signed by Dr. Michael Schiffman, a treating Board-certified orthopedic surgeon, and a claim for compensation from appellant for the period October 1 to 31, 2003. He diagnosed a post-traumatic lumbar sprain, disc herniation and radiculopathy, which he checked "yes" that these conditions were employment related due to appellant's daily and continuous walking. Under history of injury, the physician related appellant was walking her route when she felt a "sharp pain in her back extending to her" knees. Dr. Schiffman stated that appellant was totally disabled for the period September 29 to November 10, 2003 due to these conditions.

On November 17, 2003 the Office received a letter dated November 10, 2003 from appellant's representative requesting reconsideration.

By decision dated December 22, 2003, the Office denied appellant's request for modification of the denial of her claim. In support of its decision, the Office found that appellant had failed to establish that her back condition was causally related to her employment factor of walking. Specifically, the Office found that the October 30, 2003 report by Dr. Schiffman was insufficient to establish causal relationship as the report was several months after she filed her claim and he failed to provide any rationalization explaining how her condition was caused by her walking.

Appellant requested reconsideration on a form dated January 9, 2004.

On January 20, 2004 the Office denied appellant's request for reconsideration on the grounds that appellant failed to provide sufficient evidence to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act¹ 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

¹ 5 U.S.C. §§ 8101-8193.

related to the employment injury.² These are the 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,⁴ 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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

Appellant has not submitted rationalized medical evidence to establish that her neck and back conditions were caused or aggravated by factors of her federal employment. The relevant medical evidence of record includes Dr. Schiffman's October 30, 2003 attending physician's report finding that appellant's post-traumatic lumbar sprain, disc herniation and radiculopathy was caused by her employment activities by placing a checkmark in the box marked "yes." Dr. Schiffman stated that the nature of appellant's job, which included daily and continuous walking, caused her condition. 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 disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal

² *Guiseppe Aversa*, 55 ECAB ____ (Docket No. 03-2042, issued December 12, 2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004); 20 C.F.R. § 10.5(q) (an occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift).

⁵ *Ellen L. Noble*, *supra* note 3.

⁶ *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003); *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship.⁷ Dr. Schiffman did not provide any medical rationale explaining how or why appellant's employment aggravated her back condition. Thus, his report is insufficient to establish appellant's claim.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act⁹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.¹⁰

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹² When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹³

ANALYSIS -- ISSUE 2

In the present case, appellant has not established that the Office, in the January 20, 2004 decision, improperly denied her request for reconsideration of its December 22, 2003 decision. Appellant presented no evidence that the Office erroneously applied or interpreted a point of law, nor did she advance a relevant legal argument not previously considered by the Office.

⁷ *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

⁸ The Board notes that the record contains a medical report of an examination conducted by Dr. Robert Pandya, a Board-certified internist, on April 14, 2003, relative to another back claim filed by appellant, No. 132048304, submitted by appellant with his claim form. This report does not, however, contain any description of the employment factors to which appellant attributes her current back condition, nor does it address the causal relationship, if any, of appellant's aggravation of chronic lumbosacral strain to the factors of her federal employment.

⁹ 5 U.S.C. § 8128(a) (“[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

¹⁰ *Veletta C. Coleman*, 48 ECAB 367 (1997).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² 20 C.F.R. § 10.608(b).

¹³ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

With regards to the third element, the Board notes that appellant submitted no relevant, new and pertinent evidence related to establishing that her back condition was causally related to her employment and presented no legal argument with her reconsideration request. As she submitted no relevant, new and pertinent evidence related to the subject of the December 22, 2003 denial, appellant has not shown that the Office improperly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty. The Board also finds that the Office properly denied appellant's request for merit review, pursuant to 5 U.S.C. § 8128(a), of its December 22, 2003 decision denying her claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2004, December 22 and July 29, 2003 are affirmed.

Issued: May 12, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member