United States Department of Labor
Employees' Compensation Appeals Board

CYNTHIA L. COLVIN-WILLIAMSON, Appellant	)	
and	)	**Docket No. 05-1669**
DEPARTMENT OF THE ARMY, WARRIOR DENTAL CLINIC, Fort Polk, LA, Employer	)	**Issued: April 14, 2006**

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 8, 2005 appellant, through her representative, filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 20 and November 30, 2004 denying her claim for compensation for partial disability beginning May 19, 2004 and a nonmerit decision dated June 29, 2005 denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the June 29, 2005 nonmerit decision.

ISSUES

The issues are: (1) whether appellant is entitled to compensation for partial disability beginning May 19, 2004 causally related to her May 11, 1995 employment injury; and (2) whether the Office properly refused to reopen her case for review of the merits of her claim under section 8128.

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board affirmed a March 4, 1999 nonmerit decision of the Office denying merit review of appellant's claim under section 8128. The Board affirmed the Office's finding that the evidence submitted was insufficient to warrant further review of its denial of her claim for compensation from November 10 to December 12, 1997, due to her accepted employment injury of cervical strain.[1] The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a report dated May 19, 2004, Dr. Kevin E. Gorin, a Board-certified physiatrist, noted that appellant experienced a recent increase in pain radiating down her spine and had limited range of motion of the cervical area. He indicated that a magnetic resonance imaging (MRI) scan study of the cervical spine revealed spondylosis at C5-6 and stenosis.[2] Dr. Gorin diagnosed cervical spondylosis, cervical stenosis, cervical radiculopathy, thoracic outlet problems and major depression. He found that she could work only six hours per day due to her "worsening MRI [scan] and physical exam[ination] findings…." In a duty status report of the same date, Dr. Gorin checked "yes" that the history of injury provided corresponded to that on the form and responded "yes" that the diagnosed condition was due to the work injury. He indicated that appellant could work six hours per day.

On June 4, 2004 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation for two hours per day beginning May 19, 2004.

By letter dated June 14, 2004, the employing establishment challenged appellant's claim because the medical evidence addressed conditions not accepted by the Office.

In a letter dated July 1, 2004, the Office requested additional factual and medical information from appellant, including a detailed report from her attending physician addressing the causal relationship between her disability and her May 11, 1995 employment injury.

In a report dated June 23, 2004, Dr. Gorin noted that appellant was rear ended in a motor vehicle accident on May 27, 2004. He indicated that she could work for six hours per day.

Appellant, in a letter dated June 18, 2004, related that she had received medical treatment for her worsening condition since the time of her employment injury. Her supervisor, in a letter dated July 21, 2004, concurred with her statements.

By decision dated August 20, 2004, the Office denied appellant's claim on the grounds that she had not established a recurrence of disability beginning May 19, 2004 causally related to her accepted employment injury.

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[1] *Cynthia Colvin*, Docket No. 00-1271 (issued March 16, 2001).

[2] An MRI scan obtained on April 16, 2004, revealed moderate cervical spondylosis but no disc herniation or cord compression.

On October 12, 2004 appellant requested reconsideration. She related that she began working in a light-duty capacity in 2000 but that her condition worsened such that she could work for only six hours per day. Appellant noted that she started working as a medical clerk in August 2004 due to her restrictions.

In a report dated October 6, 2004, Dr. Gorin stated:

> "Her initial injury was sustained on or about May 11, 1995. She reports that she was placing trays of instruments on a top shelf when she felt a pulling and popping at the left side of her lower cervical region and the left side of her face. She was employed at that time as a dental assistant. After the injury was suffered, she complained of left facial and left upper extremity numbness. As a result of this trauma, [appellant] suffered a severe cervical paravertebral strain which emerged into a left cervical myofascial pain syndrome with an associated left cervical radiculopathy. During the course of her treatment at this clinic, [she] has worsened her condition. The cervical strain and myofascial pain syndrome have emerged into a slowly progressive and debilitating cervical spondylosis. This has caused worsening cervical pain and worsening left upper extremity pain. A cervical electrodiagnostic study and a left upper extremity nerve condition study have proven abnormal, as well, further suggesting an active cervical radiculopathy. These continued complaints, which have caused abnormal cervical posture and mechanics, have resulted in the development of cervicogenic headaches and associated cervical paravertebral spasms."

He related: "I believe with more probability than not that [appellant's] work-related injury suffered on May 11, 1995 has worsened over time and has affected [her] ability to work on a regular basis."[3]

By decision dated November 30, 2004, the Office denied modification of its August 20, 2004 decision. The Office found that Dr. Gorin failed to explain how appellant's current condition was related to her accepted cervical strain.

On February 28, 2005 appellant again requested reconsideration. She submitted a report dated December 6, 2004 from Dr. Gorin, who related:

> "[Appellant's] current condition in her cervical spine is directly related to the cervical sprain and strain, which she suffered on May 11, 1995. How this occurs is the cervical strain sets forth a degenerative cascade of deterioration, which slowly causes altered cervical posture, increased cervical strain and a decreased functional capacity."

He found that appellant's condition had worsened such that it was nearly impossible for her to work.

[3] In a report dated September 3, 2004, Dr. Gorin listed findings on examination and found that appellant should work light duty.

By decision dated June 29, 2005, the Office denied merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[4]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[5] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[6] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[9] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

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[4] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[5] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Id*.

[7] *Id*.

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a cervical strain due to her May 11, 1995 employment injury. She returned to work and began working full-time light duty in 2000. On May 19, 2004 she started working six hours per day and filed a claim for compensation for two hours per day.

In support of her claim, she submitted a report dated May 19, 2004 from Dr. Gorin, her attending physician, who diagnosed cervical spondylosis, cervical stenosis and cervical radiculopathy. He found that due to her worsening condition, as demonstrated by objective findings, she could work only six hours per day. Dr. Gorin, however, did not directly relate either appellant's increase in disability or her diagnosed conditions of cervical spondylosis, cervical stenosis and cervical radiculopathy to her employment injury. A medical opinion not addressing the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[11]

In an accompanying May 19, 2004 duty status report, Dr. Gorin checked "yes" that the history of injury corresponded to that on the form and indicated "yes" that the diagnosed condition was due to her employment injury. He did not, however, list a diagnosis on the form or provide any supportive rationale. The Board has held that the checking of a box "yes" on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[12]

Dr. Gorin, in a report dated June 23, 2004, noted appellant's history of a motor vehicle accident and again found that she could work six hours per day. As he did not address causation, his report is of little probative value.[13]

In a report dated October 6, 2004, Dr. Gorin described appellant's May 11, 1995 employment injury. He found that she sustained severe cervical strain due to her work injury "which emerged into a left cervical myofascial pain syndrome with an associated left cervical radiculopathy." Dr. Gorin indicated that appellant's condition had deteriorated over the course of his treatment. He stated: "The cervical strain and myofascial pain syndrome have emerged into a slowly progressive and debilitating cervical spondylosis." Dr. Gorin noted that objective studies confirmed cervical radiculopathy and opined that, "with more probability than not" her May 11, 1995 employment injury "affected [her] ability to work." He did not, however, provide sufficient medical rationale explaining how her diagnosed conditions of cervical spondylosis, cervical stenosis and cervical radiculopathy resulted from the May 11, 1995 employment injury, accepted by the Office for cervical strain. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is

[11] *Conard Hightower*, 54 ECAB 796 (2003).

[12] *Deborah L. Beatty*, 54 ECAB 334 (2003).

[13] *See Conard Hightower*, *supra* note 11.

sound, logical and rationale.[14] Dr. Gorin failed to provide sufficient medical rationale supporting his conclusion that her cervical strain progressed into cervical spondylosis, stenosis and radiculopathy and thus his report is of little probative value.[15]

As appellant failed to submit rationalized medical evidence establishing that she sustained partial disability beginning May 19, 2004 causally related to her May 11, 1995 employment injury, the Office properly denied her 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,[16] the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.[17] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[18] 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.[19]

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof.[20] The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[21] If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.[22]

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[14] *John W. Montoya*, 54 ECAB 306 (2003).

[15] *Robert S. Winchester*, 54 ECAB 191 (2002).

[16] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

[17] 20 C.F.R. § 10.606(b)(2).

[18] 20 C.F.R. § 10.607(a).

[19] 20 C.F.R. § 10.608(b).

[20] *Donald T. Pippin*, 53 ECAB 631 (2003).

[21] *Id*.

[22] *See Annette Louise*, 53 ECAB 783 (2003).

ANALYSIS -- ISSUE 2

In its November 30, 2004 decision denying modification, the Office found that Dr. Gorin failed to explain how appellant's current condition was due to her accepted cervical strain. With her February 28, 2005 request for reconsideration, appellant submitted a report dated December 6, 2004 from Dr. Gorin, who opined that her current condition was "directly related" to the cervical strain she sustained as a result of her May 11, 1995 employment injury. He found that her work-related cervical strain "set forth a degenerative cascade of deterioration" which altered appellant's posture and worsened her condition such that she was unable to work. In its June 29, 2005 decision, the Office found that she did not submit new and relevant medical evidence sufficient to warrant a merit review of her claim. Dr. Gorin's December 6, 2004 report, however, pertained directly to the issue of how appellant's current condition and disability resulted from her May 11, 1995 employment injury and was not previously of record.

In order to require merit review, it is not necessary that the new evidence be sufficient to discharge appellant's burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[23] As Dr. Gorin's December 6, 2004 constituted new and relevant medical evidence, the Board finds that the Office improperly denied her request for review of the merits of the claim. The case will be remanded to the Office to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, the Office shall issue a merit decision on the claim.

CONCLUSION

The Board finds that appellant has not established that she is entitled to compensation for partial disability beginning May 19, 2004 causally related to her May 11, 1995 employment injury. The Board further finds that Office improperly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[23] *See Donald T. Pippin*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2005 is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The decisions of the Office dated November 30 and August 20, 2004 are affirmed.

Issued: April 14, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board