

She first became aware of her condition on November 1, 1999 and aware of the injury and its relation to her work on June 1, 2003. Appellant did not stop work. In an undated separate statement, appellant noted that she sustained an injury in 1999 and had recurring symptoms in her right hip, right thigh and back.¹ These conditions worsened with continuing activities identified as “walking, sitting, driving, standing [and] carrying objects” which caused her “constant pain, tenderness and inflammation and places additional strain, wear, misalignment of my hip, back and thigh/leg.” Appellant alleged that her condition was continuous and became worse in the summer of 2003.

By letter dated March 29, 2005, the Office requested that appellant submit additional factual and medical information. The Office explained that the physician’s opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In a March 11, 2005 disability certificate, Dr. Jim Albert, a physician of unknown specialty, advised that appellant was unable to return work for 30 days and filled in “[i]llness employment vs. nonemployment related being evaluated and currently unclear.”

By decision dated May 18, 2005, the Office denied appellant’s claim. It found that the evidence was insufficient to support that the claimed events occurred as alleged. The Office also found that there was no medical evidence which provided a diagnosis which could be connected to her work activities.

By letter dated June 4, 2005, appellant’s representative requested reconsideration, noting that he was enclosing additional medical evidence which established her claim. He alleged that the medical evidence was received by the Office on May 8, 2005.² He also alleged that the date of injury in the claim was wrong and indicated that “it was in April 1999, not November.” Appellant’s representative also referenced a separate claim no. 140342243 and argued that appellant’s claim should be accepted.

By decision dated June 22, 2005, the Office denied appellant’s request for reconsideration without further review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.³

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ has the burden of establishing the essential elements of his or her claim including the fact that the

¹ The record reflects that appellant has a separate claim for an April 27, 1999 injury, for lumbosacral strain and bursitis under claim No. 140342243. However, that claim is not before the Board.

² The record does not reflect that any additional medical evidence was received.

³ The Office also noted appellant’s representative was notified that this was not a claim for a recurrence. He was advised that this claim was considered separately.

⁴ 5 U.S.C. §§ 8101-8193.

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 and every 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 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, 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

The Office found that appellant had not established that she sustained an occupational disease in the performance of duty. It is not disputed that appellant engaged in walking, sitting, driving, standing and carrying objects at work. The Office also found that there was no medical evidence which provided a diagnosis which could be connected to the claimed events.

The Board finds that appellant has submitted insufficient medical evidence to establish that she sustained a right hip, thigh or back condition caused or aggravated by the activities of her federal employment or any other specific factors of her federal employment.

The Board notes that the only medical report received by the Office was the March 11, 2005 report of Dr. Albert. This report did not provide any diagnosis. As noted, appellant’s burden of proof includes submitting medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed. Furthermore, the physician did not provide an opinion regarding the reason that appellant was unable to return to her employment for 30 days. Instead, he indicated that he was evaluating whether appellant’s unspecified

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

condition was employment related. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁸ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no competent medical evidence explaining how appellant's employment duties caused or aggravated a specific right hip, thigh or back condition, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”¹²

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

¹³ *Id.*

ANALYSIS -- ISSUE 2

Appellant disagreed with the Office's May 18, 2005 decision, which found that she did not sustain an injury in the performance of duty. The underlying issue on reconsideration was whether appellant established that she sustained an injury in the performance of duty. However, appellant did not provide any relevant or pertinent new evidence related to the issue of whether she sustained an injury in the performance of duty. In the June 4, 2005 request for reconsideration, appellant's representative alleged that he submitted additional evidence, including medical evidence which showed that appellant sustained an injury in the performance of duty. However, no medical evidence was received. Appellant did not submit any other argument that addressed the issue involved. Therefore, his arguments are not relevant as the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

¹⁴ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 22 and May 18, 2005 are affirmed.

Issued: August 24, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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