

September 15, 2005. In a narrative statement, appellant noted that on May 3, 2005 he developed pain down his left leg. He stated that standing, walking, lifting and climbing stairs in his job contributed to his condition. According to appellant, he had a prior lumbar injury at work on January 3, 2004.

With respect to medical evidence, appellant submitted a September 22, 2005 report from Dr. Leonard Kaplan, an osteopath. He provided a history of gradual onset of back and left leg pain since May 2005. Dr. Kaplan reported that appellant had “a history of several back injuries that were work related,” the most recent occurring a year or two earlier when he fell on ice. He also noted a March 30, 2005 incident where appellant tripped on stairs. Dr. Kaplan diagnosed probable lumbar focal disc herniation with left radiculitis. He further stated: “Based on the information available to me today, causality is related to work, most likely with an occupational aggravation of the patient’s back pain that relates back to his low back injury and the work 1 [to] 2 years ago. The exact date of the previous injury was not given to me by the patient today.” Appellant also submitted physical therapy reports.

The Office requested that appellant submit additional medical evidence, including a report with a definitive diagnosis. By decision dated December 23, 2005, the Office denied the claim for compensation. The Office found that the medical evidence was insufficient to establish appellant’s claim.

By letter dated May 30, 2006, appellant requested reconsideration of his claim. He indicated that he was submitting an additional medical report from Dr. Kaplan, but the record does not contain additional evidence accompanying the reconsideration request.

In a decision dated August 14, 2006, the Office determined that the application for reconsideration was insufficient to warrant further merit review of the claim. The Office noted that no additional evidence from Dr. Kaplan had been received.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.³

ANALYSIS -- ISSUE 1

Appellant filed an occupational claim and he discussed the job duties of a letter carrier, such as standing, walking, lifting, carrying a bag and climbing stairs. With respect to the medical evidence, however, Dr. Kaplan did not provide a reasoned medical opinion based on a complete background. He did not provide a clear diagnosis of injury, as he noted only a probable disc herniation and generally referred to an aggravation of back pain. In addition, he did not provide a complete history. Dr. Kaplan referred to “several” prior back injuries, without providing a detailed medical history. Finally, he did not discuss the identified work duties and provide a reasoned medical opinion on causal relationship between the work factors and a diagnosed condition.

It is, as noted above, appellant’s burden of proof to submit evidence sufficient to establish the claim. The Board finds the record did not contain a reasoned medical opinion, based on a complete and accurate background, on causal relationship between identified employment factors and a diagnosed condition. Appellant did not meet his burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one

³ *Victor J. Woodhams, supra* note 2.

of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

ANALYSIS -- ISSUE 2

Although appellant indicated that he was submitting additional medical evidence, the record transmitted to the Board does not include any evidence submitted on reconsideration prior to the August 14, 2006 Office decision.⁵ The underlying issue is medical in nature and must be resolved by probative medical evidence. In this case, appellant 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 submit relevant and pertinent new evidence not previously considered by the Office. Since appellant did not meet any of the requirements of section 10.606(b)(2), he is not entitled to a merit review of his claim.

CONCLUSION

The medical evidence is not sufficient to meet appellant's burden of proof to establish a back injury causally related to factors of his federal employment. Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and, therefore, he was not entitled to a merit review of his claim.

⁴ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁵ The record does contain additional evidence submitted after the August 14, 2006 decision, as well as on appeal to the Board. The jurisdiction of the Board is limited to evidence that was before the Office at the time of its final decision and the Board cannot review new evidence on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 14, 2006 and December 23, 2005 are affirmed.

Issued: December 21, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board