

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

C.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Long Beach, CA, Employer)

Docket No. 06-1688
Issued: October 27, 2006

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2006 appellant filed a timely appeal from a May 3, 2006 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain an injury while in the performance of duty and a June 1, 2006 nonmerit decision which denied 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.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury while in the performance of duty; and (2) whether the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 8, 2005 appellant, then a 53-year-old lead transportation security screener, filed an occupational disease claim (Form CA-2). On July 6, 2004 she first realized that arthritis

in her fifth and sixth vertebrae was caused by factors of her federal employment. Appellant stated that her condition worsened due to heavy lifting. She noted that her doctor explained the condition to her. In an accompanying statement, appellant related that a July 2004 x-ray diagnosed her condition and that it worsened due to her workload.¹ On the reverse of appellant's claim form Raymond Velasquez, a supervisor, indicated that she was last exposed to conditions alleged to have caused her arthritis on August 6, 2005.

Appellant submitted an August 6, 2005 prescription from Dr. Brian C. Tang, Board-certified in preventive medicine, who directed modified work for two weeks. Dr. Tang limited lifting to no more than 25 pounds and bending and stooping of the neck and back for medical reasons. He recommended that appellant undergo an orthopedic evaluation.

By letter dated October 19, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit to establish her claim. The Office requested the specifics of appellant's work exposure, details of the development of her condition, the nature and extent of the condition and the relationship of the condition to her employment. It also requested a rationalized medical report from an attending physician which provided a review of her specific activities, duties, exposures or incidents in her federal employment which caused or contributed to the alleged injury.

In an undated statement received by the Office on November 8, 2005, appellant described the development of her condition, medical treatment and physical restrictions. She stated that, while visiting her parents during the week of July 4, 2004, she experienced numbness and a tingling sensation in both hands and arms. Appellant believed that shaking them around would allow circulation which would help her. She reiterated that a July 6, 2004 x-ray diagnosed aggravated arthritis in the fifth and sixth vertebrae. Appellant's physician advised her that heavy lifting would cause deterioration. The following day, she submitted medical documentation to the employing establishment for her use of sick leave. Appellant noted that the physical restrictions from her 2004 knee surgery, which included no lifting more than 40 pounds were always in place. She stated that in August 2005, Dr. Edward Green, an attending Board-certified orthopedic surgeon, treated her neck and restricted her from lifting more than 10 pounds.

In an August 23, 2005 form report, Dr. Green provided a history that appellant injured her knees and neck due to heavy lifting. He found that she had cervical sprain/strain, bilateral knee strain and valgus, cervical degenerative disc disease and osteoarthritis. Dr. Green noted that appellant's physical limitations included no lifting more than 10 pounds. He opined that the diagnosed conditions were not related to the alleged employment injury.

By decision dated January 10, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. The factual evidence did not provide specific details about the type of heavy lifting that she alleged as a cause of the arthritis in her neck. The

¹ In a statement that accompanied her Form CA-2, appellant indicated that in August 2003, she sustained a torn meniscus in the right knee. She underwent surgery in February 2004 and never fully recovered. Appellant stated that an x-ray taken two weeks prior to the filing of her Form CA-2 found arthritis in her knee.

medical evidence failed to establish a causal relationship between the alleged injury and appellant's federal employment duties.

On January 25, 2006 appellant requested reconsideration. In a March 2, 2006 form report, Dr. Green reiterated the history that she hurt her knees and neck due to heavy lifting and that she could not lift more than 10 pounds.

In a May 3, 2006 decision, the Office denied modification of the January 10, 2006 decision. It found the factual evidence of record insufficient to establish appellant's specific work duties. The Office further found the medical evidence of record insufficient to establish that she sustained an injury causally related to factors of her employment.

The Office received Dr. Tang's December 30, 1999 prescription for medication. On May 23, 2006 appellant requested reconsideration of the Office's May 3, 2006 decision.

By decision dated June 1, 2006, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions, nor included new and relevant evidence and, thus, was insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

Section 10.5(q)⁵ defines an occupational disease or illness as “a condition produced by the work environment over a period longer than a single workday or work shift.” In claims not based on a specific incident, an employee must submit sufficient evidence to identify fully the particular work factors alleged to have caused the disease or condition and to show that he or she was exposed to the factors claimed; thus, the employee bears the burden of proving that work was performed under the specific factors at the time, place, in the manner, and to the extent alleged.⁶ While the employee’s condition need not be caused by a specific injury or incident, or an unusual amount of stress or exertion,⁷ the employee must submit medical evidence which diagnoses a specific disease or condition and explains how identified employment factors are a competent cause of the injury.⁸

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.⁹ Neither the fact that appellant’s condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.¹⁰

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim alleging that arthritis in her fifth and sixth cervical vertebrae was caused by heavy lifting while working as a lead transportation security screener. In an undated narrative statement, she related that, while visiting her parents in 2004, she experienced numbness and a tingling sensation to both hands and arms. A July 6, 2004 x-ray diagnosed aggravated arthritis in the fifth and sixth cervical vertebrae and her doctor advised her that heavy lifting would cause her condition to deteriorate. She submitted Dr. Tang’s August 6, 2005 prescription note which directed her to perform modified work for two weeks and limited lifting to no more than 25 pounds and bending and stooping of the neck and back. Dr. Green’s August 23, 2005 and March 2, 2006 reports provided a history that appellant hurt her knees and neck due to heavy lifting and found that she could not lift more than 10 pounds.

The employing establishment did not dispute the work factors to which appellant attributed her neck and back condition, heavy lifting as a lead transportation security screener.

⁵ 20 C.F.R. § 10.5(q).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3 (April 1993).

⁷ *George A. Johnson*, 43 ECAB 712, 716 (1992).

⁸ *Judith A. Peot*, 46 ECAB 1036 (1995).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

Mr. Velasquez, a supervisor, stated on appellant's Form CA-2, that she was last exposed to heavy lifting on August 6, 2005. The Board finds that the evidence of record provides a consistent history that appellant performed heavy lifting while working at the employing establishment. There is no evidence disputing that she was required to perform heavy lifting as a transportation security screener. The Board finds the evidence of record sufficient to establish that appellant was required to perform these duties in her federal employment.

The Board finds, however, that the medical evidence of record fails to establish that appellant sustained an injury due to the accepted employment factor. The prescription note of Dr. Tang merely directed appellant to perform modified work for two weeks and limited lifting to no more than 25 pounds and bending and stooping of the neck and back. The March 2, 2006 report of Dr. Green found that appellant could not lift more than 10 pounds. This evidence fails to provide a definite diagnosis for any cervical condition or to address whether the diagnosed condition was causally related to the accepted employment factor. Neither Dr. Tang, nor Dr. Green provided any explanation addressing how the lifting required in appellant's employment would cause or contribute to arthritis in the cervical spine.

Dr. Green's August 23, 2005 report found that appellant's cervical sprain/strain, bilateral knee strain and valgus, cervical degenerative disc disease and osteoarthritis were not related to the alleged employment injury. As he did not find a causal relationship between the accepted factor of her employment and the diagnosed conditions, the Board finds that Dr. Green's report is insufficient to establish her claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained arthritis in her neck and back causally related to factors of her federal employment as a transportation security screener. She did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹¹ 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) constitute relevant and pertinent new evidence not previously considered by the Office.¹² 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.¹³ 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 of the merits.

¹¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(1)-(2).

¹³ *Id.* at § 10.607(a).

ANALYSIS -- ISSUE 2

In decisions dated January 10 and May 3, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. On May 23, 2006 she disagreed with these decisions and requested reconsideration. The relevant underlying issue is whether appellant sustained an injury causally related to factors of her federal employment.

Appellant submitted Dr. Tang's December 30, 1999 prescription for medication. This evidence predates the filing of her claim on August 8, 2005. It fails to address whether appellant sustained an injury causally related to her work duties. For these reasons, Dr. Tang's prescription note is irrelevant and insufficient to warrant reopening her claim for further merit review.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.¹⁴

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty. The Board further finds that the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁴ See *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 1, May 3 and January 10, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 27, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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