United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 06-1151**
	)	**Issued: September 1, 2006**
DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, San Francisco, CA, Employer	)	

Appearances:
C.M., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 17, 2006 appellant filed a timely appeal from the January 19, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying reconsideration and a September 30, 2005 merit decision denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues in this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 25, 2005 appellant, then a 47-year-old equal opportunity specialist, filed an occupational disease claim alleging that her right hand, arm and shoulder pain was due to her

data entry duties, which had a completion deadline of April 14, 2004. There is no indication that appellant stopped work.

Appellant submitted an April 22, 2005 report in which Dr. James E. Pressley, an attending chiropractor, diagnosed rotator cuff dysfunction, cervical spine syndrome and bilateral wrist tendinitis due to recent excessive computer use at work. He recommended that appellant undergo physical therapy and not work on the computer from April 15 to 19, 2005 or perform heavy lifting, computer or any physical work.

By letter dated June 6, 2005, the Office advised appellant that additional factual and medical information was required. Appellant was advised that under the terms of the Federal Employees' Compensation Act, the Office did not recognize treatment of bilateral upper extremity conditions by a chiropractor as a chiropractor was not defined as a physician except for manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

In a June 30, 2005 statement, appellant advised that her claim was for both arms and was due to her computer work and writing by hand and using the telephone. She advised that Dr. Pressley would forward any additional information. However, no further reports were received.

In a July 1, 2005 email, the Office again advised appellant of the limited circumstances in which it could consider evidence from a chiropractor.

By decision dated July 7, 2005, the Office denied appellant's claim. It found that appellant did not sustain an injury as the only medical evidence received was from a chiropractic physician.

In a July 15, 2005 letter, appellant requested reconsideration. In emails dated July 6 and 15, 2005, she stated that she signed a medical release on July 1, 2005 for Dr. Pressley to send her medical records and the records were to be sent by his office. A copy of a July 1, 2005 release was submitted, together with copies of treatment notes dated April 15 to June 10, 2005.

By decision dated September 30, 2005, the Office denied modification of the July 7, 2005 decision, finding that there was no report of a qualified physician establishing a diagnosed medical condition resulting from appellant's federal employment.

In a December 21, 2005 letter, appellant requested reconsideration. She stated that Dr. Pressley provided thorough and effective treatment and advised that she had x-rays which demonstrated subluxation of the spine for which she was treated. She requested that the Office contact Dr. Pressley's office.

By decision dated January 19, 2006, the Office denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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. 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.[1]

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.[2]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[3]

ANALYSIS -- ISSUE 1

It is not disputed that appellant has performed data entry on a computer during the course of her employment. However, there is no medical evidence to establish that her upper extremity conditions are causally related to her established employment factors. Appellant did not submit a medical report from a physician addressing how her employment duties caused or contributed to her upper extremity conditions. The record contains reports from Dr. Pressley, a chiropractor. In an April 22, 2005 report, Dr. Pressley diagnosed rotator cuff dysfunction, cervical spine syndrome and bilateral wrist tendinitis, which he opined was due to recent excessive computer use at work. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that their services are limited to treatment consisting of manual manipulation of the spine to correct subluxations as demonstrated by x-ray to exist.[4] The Office's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the

[1] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004); *Gary J. Watling*, 52 ECAB 357 (2001).

[2] *Roy L. Humphrey*, 57 ECAB __ (Docket No. 05-1928, issued November 23, 2005); *Elizabeth H. Kramm* (*Leonard O. Kramm*), 57 ECAB ___ (Docket No. 05-715, issued October 6, 2005).

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[4] 5 U.S.C. § 8101(2); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[5] There is no indication that Dr. Pressley obtained any x-ray which demonstrated spinal subluxation or that his treatment was limited to manual manipulation of the spine. Therefore, he is not considered a "physician" as defined under the Act and his reports are of no probative value.

There is no medical evidence addressing the causal relationship between appellant's claimed upper extremity conditions and her federal employment. Consequently, appellant has not established her upper extremity conditions are due to her federal employment.

While appellant may believe that her work environment contributed to her upper extremity conditions, the record contains no medical opinion explaining how her work caused or aggravated her conditions. 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.[6] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[7] Casual relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing how appellant's medical condition was caused or aggravated by her employment duties, she 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

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[8] The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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 Office.[9] Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[10]

[5] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

[6] *Nicollette R. Kelstrom*, 54 ECAB 570 (2003).

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] 20 C.F.R. § 10.608(a) (1999).

[9] 20 C.F.R. § 10.606(b)(1)-(2).

[10] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant's December 21, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration asserted that she had x-rays taken which demonstrated subluxation of the spine for which she was treated. She further requested that the Office contact Dr. Pressley's office. However, appellant's letter is not relevant to the underlying medical issue of whether her upper extremity conditions are work related. The letter does not establish that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office.[11]

With respect to the third requirement, appellant did not submit any new or relevant medical evidence. Although appellant asserted that x-rays showed a spinal subluxation, no medical reports were submitted to establish whether she had a spinal subluxation, based on x-ray and, if so, whether any such spinal subluxation was due to the implicated factors of employment.

As 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 evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her claimed medical conditions were caused or aggravated by her federal employment. The Board further finds that the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

[11] Regarding appellant's suggestion that the Office contact her chiropractor regarding additional information, the Board notes that it is appellant's burden to present evidence necessary to establish her claim. *See Katherine J. Friday, supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 19, 2006, September 30 and July 7, 2005 are affirmed.

Issued: September 1, 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