

FACTUAL HISTORY

On May 16, 2006 appellant, then a 49-year-old medical clerk, filed an occupational disease claim alleging that she developed pain and swelling in her lower extremities, hands, neck and low back due to repetitive movement in the performance of duty. She first became aware of her condition on March 31, 2006 and first attributed her condition to her employment on April 20, 2006. The Office requested additional factual and medical information regarding appellant's claim by letter dated May 22, 2006 and allowed her 30 days to respond. The Office noted that she began working as a medical clerk on April 4, 2006.

Appellant submitted a narrative statement dated May 26, 2006. She described her repetitive activities as constantly rising from her seat to go to the copy machine, associate orders with charts, and write orders on nurses' boards and answer the telephone. Appellant noted that she had preexisting conditions including torn ligaments in her left knee, pinched nerves in her neck, a fractured coccyx, residuals from back surgery and blood clots in her lungs.¹

In a report dated June 20, 2006, appellant's attending physician, Dr. Dwayne L. Clay, Board-certified in physical medicine and rehabilitation, addressed appellant's current condition. He stated that her medical clerk position required her to change positions from sitting to standing, to twist, stoop and bend. Dr. Clay stated that these activities exacerbated the pain and discomfort in her knees. He opined that appellant was totally disabled.

By decision dated July 5, 2006, the Office denied appellant's claim. It found that her position required repetitive motions but she did not submit sufficient medical evidence to establish a diagnosed condition as a result of these repetitive motions. The Office denied appellant's claim for failure to establish fact of injury.

Appellant requested an oral hearing on July 10, 2006. She testified at the oral hearing on November 28, 2006.

By decision dated January 31, 2007, the hearing representative affirmed the Office's July 5, 2006 decision. He found that appellant had not submitted sufficient medical evidence to establish that her repetitive employment activities resulted in a diagnosed condition.

Appellant requested reconsideration of the hearing representative's January 31, 2007 decision on March 15, 2007. She submitted a narrative statement alleging that her repetitive work activities as a medical clerk aggravated her preexisting conditions. Appellant also submitted excerpts from an employing establishment manual, a March 22, 2007 job offer and documents from separate claims. In a note dated April 19, 2006, Dr. Mark J. Samson, a physician, indicated that appellant was totally disabled from April 19 to 24, 2006. Appellant also submitted an activity log and Dr. Clay's June 20, 2006 report.

¹ The Office noted that appellant's claims for lumbar strain, lumbar, thoracic and cervical intervertebral disc disorders, right leg radiculopathy and pulmonary embolus remained open for medical treatment and that her claim for coccyx fracture and left knee contusion was also open.

By decision dated July 10, 2007, the Office declined to reopen appellant's claim for consideration of the merits. The Office found that the evidence was not sufficient to require further merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.² 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 the 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.³ The Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation.⁴

ANALYSIS -- ISSUE 1

Appellant submitted factual evidence regarding the employment duties which she felt caused or contributed to her current physical condition. The Office accepted that her position as a medical clerk required her to change positions from sitting to standing and to bend, twist and stoop. However, it found that appellant failed to submit sufficient medical opinion evidence to establish a diagnosed condition as the result of these employment activities.

In support of her claim for an occupational disease, appellant submitted a report dated June 20, 2006 from Dr. Clay, a physician Board-certified in physical medicine and rehabilitation, who noted appellant's job duties and stated that these duties exacerbated the pain and discomfort in appellant's knees. Dr. Clay did not provide any other diagnosis of appellant's knee condition. He did not provide the necessary medical opinion evidence to meet appellant's burden of proof in establishing an occupational disease claim. Dr. Clay did not provide a clear diagnosis. As noted, the Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation. Without submitting a detailed and comprehensive medical report describing appellant's history of injury, preexisting conditions and current knee conditions complete with a diagnosis, appellant has failed to meet her burden of proof and the Office properly denied her claim.

² 20 C.F.R. § 10.5(q).

³ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁴ *Robert Broome*, 55 ECAB 339, 342 (2004).

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,⁵ the Office's regulations provide that the evidence or argument submitted by 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.⁶ 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.⁷

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on March 15, 2007 and submitted additional factual and medical evidence. She submitted a narrative statement, excerpts from an employing establishment manual and an activity log. These documents constitute factual evidence which is not relevant to the issue for which appellant's claim was denied, whether she has submitted sufficient medical evidence to establish a diagnosed condition resulting from her accepted employment duties. As these documents are not relevant, the documents are not sufficient to require the Office to reopen her claim for consideration of the merits.

Appellant also submitted several documents generated by the Office pertaining to separate claims before the Office. These documents do not constitute medical evidence, do not address the central issue in the current claim, whether a diagnosed condition resulted from her employment duties after March 31, 2006, and are not sufficient to require the Office to reopen her claim for consideration of the merits.

In support of her request for reconsideration, appellant resubmitted Dr. Clay's June 20, 2006 report. As the Office considered this report in reaching its January 31, 2007 and July 5, 2006 decisions, this report is not new evidence. As the report does not constitute new evidence it is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant also submitted a work release note dated April 19, 2006 from Dr. Samson, a physician, indicating that she was totally disabled from April 19 to 24, 2006. While this note is new medical evidence, it is not relevant and pertinent to the issue for which the Office denied her claim. There is no diagnosis of a condition which rendered appellant disabled for the period of time specified by Dr. Samson. Without a medical diagnosis or other medical findings regarding her condition, this report is not relevant to the issue for which her claim was denied and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

⁵ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

CONCLUSION

The Board finds that appellant failed to submit the necessary medical evidence to establish a condition resulting from her accepted employment activities and therefore failed to meet her burden of proof in establishing an occupational disease claim. The Board further finds that she failed to submit relevant and pertinent new evidence requiring the Office to reopen her claim for consideration of the merits on July 10, 2007.

ORDER

IT IS HEREBY ORDERED THAT the July 10 and January 31, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2008
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