



## **FACTUAL HISTORY**

On May 16, 2005 appellant, then a 49-year-old medical clerk, filed an occupational disease, alleging that on March 31, 2005 she realized that she had developed swelling in her left knee, pain in her neck and cramps in her legs, hands and lower back with a burning sensation. She first attributed this condition to her employment duties of repetitive movement and constant reaching on April 20, 2006.

By letter dated May 22, 2006, the Office requested additional factual and medical information in support of her claim. Appellant responded on May 26, 2006 and stated that she began working as a medical clerk on March 31, 2006 for four hours a day. She worked for three weeks and after work, her left knee became swollen, her legs ached and her feet were swollen. Appellant also experienced neck pain, hand pain and lower back tightness with a burning sensation. She stated that her medical clerk position required constant reaching and movement including “getting up and down” to copy orders, place the orders in the appropriate charts and on the nurses’ board as well as to answer the telephone. Appellant reported these duties to her physician on April 20, 2006. Appellant’s physician informed her that the position was not appropriate due to her prior injuries including a torn ligament in her left knee, two pinched nerves in her neck, a broken coccyx and back surgery.

In a report dated June 20, 2006, Dr. Dwayne L. Clay, Board-certified in physical medicine and rehabilitation, noted that appellant had developed increasing pain and discomfort beginning April 20, 2006. He stated:

“She was assigned to work on one of the nursing wards as a medical clerk. This required her to do repetitive tasks using her upper extremities repetitively numerous times a day, changing positions from sitting to standing, twisting, stooping and bending. This has exacerbated the pain in her low back and upper extremities. Most notably she has been having increasing pain and discomfort in her knees, more on the left side than the right. Due to this exacerbation of pain and discomfort, I have taken her out of work as of April 20, 2006.”

Dr. Clay stated that he was investigating and evaluating appellant’s low back, knee, neck and upper extremities, but did not provide any diagnoses.

By decision dated June 5, 2006, the Office denied appellant’s claim for an occupational disease finding that she established the alleged employment duties to which she attributed her condition; however, she had not provided the necessary medical evidence to establish a condition resulting from these duties.

Appellant requested an oral hearing on July 10, 2006. She testified at the oral hearing on November 28, 2006. Appellant had two prior claims that were accepted by the Office, a back injury and a claim for left knee, coccyx and cervical injury. She stated that her most recent claim was for aggravation of these accepted conditions due to her employment duties as a medical clerk. Appellant noted that, as union president, she also worked for the union four hours a day which did not require her to move unless she wanted to do so. She stated that she sat, answered the telephone and talked to people. Prior to her accepted injuries, appellant was a licensed

practical nurse and worked four hours in the union office. Her prior diagnosed conditions included a torn ligament in the left knee for which surgery was recommended. Appellant continued to receive medical treatment under her prior claims.

By decision dated January 31, 2007, an Office hearing representative affirmed the July 5, 2006 decision, finding that there was insufficient medical evidence to establish that her work duties had aggravated her preexisting conditions.

In a letter dated February 13, 2007, appellant, through her representative, requested reconsideration. She reviewed the facts of the case and discussed her referral, under a separate claim number, to a second opinion physician. Appellant submitted a copy of the notice of oral hearing, a time log of her employment activities from March 20 to April 6, 2006 and a copy of her limited-duty assignment. She also submitted a March 10, 2006 letter from the Office, under a separate claim number which stated that appellant's claims had been accepted for acute lumbar strain, lumbar/thoracic/cervical intervertebral disc disorders, radiculopathy of the right leg, coccyx fracture, iatrogenic pulmonary embolism, precordial pain and contusion left knee as a result of employment injuries on July 27, 2000 and February 25, 2002. Appellant submitted letters from the employing establishment offering her a limited-duty position on March 22, 2007 and a letter dated May 24, 2006 from the Office finding a conflict of medical opinion in her prior claims. She submitted excerpts from the Ward Clerk Manual. Appellant resubmitted Dr. Clay's June 20, 2006 report and the Office's July 5, 2006 decision. On April 19, 2006 Dr. Mark J. Samson, a Board-certified family practitioner, stated that appellant should be excused from work from April 19 to 24, 2006, for "medical reasons."

By decision dated July 10, 2007, the Office declined to reopen appellant's claim for further consideration of the merits finding that the evidence submitted in support of her claim was repetitious or irrelevant.

### **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.<sup>1</sup> 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 a 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.<sup>2</sup>

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant's position as a medical clerk required her to frequently change position from sitting to standing and perform twisting, stooping and bending and repetitive upper extremity movements. However, appellant failed to provide any medical evidence diagnosing a physical condition resulting from these employment activities. The only medical evidence of record is the June 20, 2006 report from Dr. Clay, Board-certified in physical medicine and rehabilitation, who noted appellant's employment activities and attributed her increasing pain and discomfort to these activities. He did not specify a firm diagnosis of a condition that was caused or aggravated by her employment activities. The Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation.<sup>3</sup> The record reveals that appellant has other claims documenting conditions accepted by the Office. Dr. Clay did not address how any of her preexisting conditions were aggravated by her work requirements. As he did not provide the necessary medical evidence to establish the presence or existence of a disease or condition, this report is not sufficient to meet appellant's burden of proof. Appellant has not established an occupational disease as a result of her employment duties.

### **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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

In support of her request for reconsideration, appellant did not submit relevant or pertinent new evidence not previously considered by the Office. She resubmitted a copy of the notice of oral hearing, Dr. Clay's report and the Office's July 5, 2006 decision. As these documents were already in the record at the time of the hearing representative's January 31, 2007 decision, they do not constitute new evidence and are not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant also submitted factual information regarding her employment duties as a medical clerk including a time log of her employment activities beginning March 20, 2006, a

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<sup>3</sup> *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>4</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> *Id.* at § 10.608(b).

copy of her limited-duty assignment and excerpts from the ward clerk manual. This factual evidence is not relevant to the issue for which the Office denied appellant's claim, whether the medical evidence established a diagnosed condition. This evidence is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant also submitted documents related to her previously accepted claims, including letters from the Office discussing her accepted conditions and finding a conflict of medical opinion evidence. These documents are not relevant to the issue of whether her accepted employment activities on or after March 20, 2006 caused an occupational disease. As these documents do not consist of medical evidence addressing whether a medical condition arose from appellant's employment activities on or after March 20, 2006, they are 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. Sampson, a Board-certified family practitioner, indicating that she was totally disabled from April 19 to 24, 2006. Dr. Sampson stated that appellant's disability was due to medical reasons but did not provide the medical reasons or any diagnosed condition which resulted in her inability to work. As this note does not provide a diagnosis it is not relevant to the reason for which the Office denied appellant's claim and is not sufficient to require the Office to reopen her claim for consideration of the merits.

Appellant's request for reconsideration did not include any relevant and pertinent new evidence and therefore the Office properly declined to reopen her claim for consideration of the merits.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof in establishing an occupational disease as she failed to submit sufficient medical evidence in support of her claim. The Office properly declined to reopen appellant's claim for consideration of the merits. She failed to submit relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration.

**ORDER**

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

Issued: June 3, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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