

FACTUAL HISTORY

This is the second time that this case has been before this Board on appeal. The findings of fact and conclusions of law from the prior Board decision is hereby incorporated by reference.¹ The relevant facts are briefly set forth below.

On March 17, 2004 appellant, then a 49-year-old rating specialist, filed an occupational disease claim alleging that, as a result of heavy lifting and lifting overhead required by her federal position, she sustained recurrent tenosynovitis in her right hand, degenerative disc disease in her cervical spine with radiculopathy in the left upper extremity, an increase in her fibromyalgia and recurrent tenosynovitis in her right hand. The Office accepted appellant's claim for cervical degenerative disc disease at C6-7. Appellant requested that her claim be expanded to include radiculopathy of the left upper extremity, radiculopathy of the left lower extremity, degenerative and herniated discs, degenerative joint disease, migraine headaches and aggravation of fibromyalgia. By decision dated December 30, 2005, the Office found that appellant's claim should not be expanded to include these conditions as no medical evidence showed that these conditions were causally related to appellant's work as a rating specialist. The Board affirmed this decision on September 18, 2006.²

By letter dated October 24, 2006, appellant requested reconsideration. In support thereof, appellant resubmitted the August 16, 2004 report of Dr. Michael A. Franklin, her treating Board-certified neurologist, which had previously been considered by the Office and the Board. Appellant also submitted an October 5, 2006 letter by Dr. Franklin wherein he expressed his belief that his opinion was rationalized and indicated that he was a Board-certified neurologist of 15 years practice experience. Dr. Franklin noted that appellant indicated that she had been involved in an occupation where there was extreme heavy lifting and stretching to maneuver and position files. He opined: "I have reason to believe based on my experience that there is a significant medical probability that [appellant's] occupation either caused or contributed to her degenerative disc disease involving her cervical and lumbar spine." Dr. Franklin noted his belief that appellant's workers' compensation claim should be reopened based upon review of her records.

By decision dated February 5, 2007, the Office denied modification of its prior decision.

On November 30, 2007 appellant again requested reconsideration. Appellant, through her attorney, argued that her claim should be expanded to include bilateral upper extremity radiculopathy based on the reports of Dr. Franklin. In support thereof, counsel submitted a November 27, 2007 report wherein Dr. Franklin noted that appellant has been his patient for several years. Dr. Franklin diagnosed bilateral upper extremities radiculopathy, concluding that it is directly caused by the aggravation of degenerative disc disease of the C6-7. He explained that the aggravation is objectively demonstrated by the electrodiagnostic studies of March 2004.

¹ Docket No. 06-896 (issued September 14, 2006).

² *Id.*

Evidence of C6 and C7 involvement was not demonstrated in the electrodiagnostic studies done the previous year. Dr. Franklin opined:

“This is objective evidence that there was cervical radicular involvement at C6-7 as of March 2004 as opposed to previously. The magnetic resonance imaging [MRI scan] report of the cervical spine of March 2004 along with the electrodiagnostic study in March 2004 are consistent with the worsening of the claimant’s condition. More specifically, the points of numbness that do correspond to the C6 and C7 distribution. The movements required in order to lift the heavy boxes and place overhead as relayed by the patient would involve those parts of the anatomy, thus consistent with the complaints. I am also aware of the motor vehicle accident that the claimant was involved in June 2005. However, the multiple cervical MRI [scans] performed after that date do not show any dramatic changes since the March 2004 studies. As previously discussed, the lifting and reaching for the heavy files aggravated the preexisting and aggravated degenerative disc disease and the objective tests do in fact correspond to the C6 and C7 distribution as far back as the 2004 MRI [scan] report. This is consistent with the symptomology she has expressed as numbness.”

By decision dated February 22, 2008, the Office denied modification of the prior decisions.

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.³

Under the Federal Employees’ Compensation Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁴ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁵ A medical restriction that is based on a fear of future aggravation due to employment exposure is not an injury under the Act and therefore no compensation can be paid for such a possibility.⁶

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁵ *Id.*

⁶ *Carlos A. Maurero*, 50 ECAB 117, 119 (1998); *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

ANALYSIS

In the instant case, the Office accepted appellant's claim for cervical degenerative disc disease at C6-7. However, it rejected appellant's claim that her work injury resulted in bilateral upper extremity radiculopathy or other conditions enumerated by appellant and the Board affirmed the Office's finding. With regard to the reports of Dr. Franklin previously considered by the Board, this Board found that these reports were not persuasive as Dr. Franklin did not explain how the objective tests support his opinion and for the reason that his reports were speculative. The Board also noted that, although Dr. Franklin did note a dramatic change in the findings when appellant's October 2003 study is compared to the March 2004 study, this was insufficient to show causal relationship. After the Board's decision, appellant twice requested reconsideration and submitted further medical reports by Dr. Franklin, whose October 5, 2006 letter basically sets forth his qualifications, reiterated his conclusions in his prior reports and stated that he thought appellant's claim should be reopened. This report does not contain any new rationalized medical opinion and is therefore insufficient to modify the prior decisions. In his November 27, 2007 report, Dr. Franklin does go into greater detail, comparing the electrodiagnostic studies before and after 2004 and concluding that a comparison of these two studies shows a change of appellant's condition. He specifically noted that the diagnosis as to radiculopathy of the bilateral extremities being caused by the aggravation of the degenerative disc disease at C6-7 was demonstrated by the electrodiagnostic studies of March 2004 in that evidence of C6 and C7 involvement was not demonstrated in the electrodiagnostic studies done the previous year. However, this Board already noted that the fact that appellant's symptoms appeared during her employment without a rationalized opinion as to causal connection is insufficient to establish causal relationship.⁷

Accordingly, the medical evidence is insufficient to relate appellant's employment to her bilateral upper extremities radiculopathy. Therefore, the Board finds that the Office properly denied expansion of the claim.

CONCLUSION

The Board finds that the Office properly determined that appellant's claim should not be expanded to include bilateral upper extremities radiculopathy.

⁷ *Ernest St. Pierre*, 51 ECAB 623 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2008 is affirmed.

Issued: November 26, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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