

bending, twisting, climbing, pulling and walking as the employment factors contributing to her condition. Appellant indicated that she had prior work-related back injuries in 1993 and 1995.¹

In a July 31, 2007 report, Dr. Frederick Graham, a physiatrist, indicated that appellant was seen for low back pain with radiation into the left leg as well as neck and right shoulder pain. Dr. Graham reported that x-rays revealed degenerative disc disease in the lumbar and cervical spine. In a November 27, 2007 report, he stated that a magnetic resonance imaging (MRI) scan showed cervical degenerative changes at C4-7, with moderate left foraminal narrowing and spurring at C4-5. Dr. Graham also indicated that the MRI scan showed L3-4 and L4-5 disc disease. He reported in his history that appellant “states work aggravates her condition.”

By letter dated January 25, 2008, the Office requested that appellant submit additional factual and medical evidence. Appellant submitted reports dated December 17, 19 and 21, 2005 from Dr. Philip Bobo, an emergency medicine specialist, diagnosing a lumbar strain. In a February 8, 2007 report, Dr. David Fernandez, a physiatrist, diagnosed lumbar strain with radiculopathy and in a February 10, 2007 report Dr. Dale Christensen, a family practitioner, diagnosed lumbar radiculopathy. Appellant also submitted a narrative statement again describing the identified work factors.

In a decision dated April 3, 2008, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On May 19, 2008 appellant requested reconsideration of her claim. She stated she continued to have back problems since 1995 and felt her job aggravated her back condition. Appellant also indicated that she was sending in a new medical report.

By decision dated May 30, 2008, the Office found the application for reconsideration was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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

¹ The record contains a June 29, 1995 Office letter accepting lumbar herniated disc under OWCP File No. xxxxxx433.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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.⁴

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized; the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁷

ANALYSIS -- ISSUE 1

Appellant provided factual statements identifying employment factors that included lifting, bending, twisting, pulling, climbing and walking. It is her burden of proof to submit rationalized medical opinion evidence on causal relationship between a diagnosed condition and the identified employment factors.

None of the medical reports before the Office at the time of its April 3, 2008 merit decision provided a rationalized medical opinion on the causal relationship of her claimed back condition with her federal employment.⁸ Dr. Graham diagnosed lumbar and cervical degenerative discs, without discussing causal relationship. He briefly indicated a November 27, 2007 report that appellant felt her job aggravated her condition, without providing his own opinion on the issue. The medical evidence does not contain a report with a complete history and discussion of the identified work factors and a rationalized medical opinion relating a diagnosed condition to appellant's federal employment. The Board finds appellant did not meet her burden of proof and the Office properly denied the claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.⁹ The

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ Appellant did submit additional evidence on appeal, but the Board's jurisdiction is limited to review of the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁹ 5 U.S.C. § 8128(a).

employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”¹⁰

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.¹¹

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 these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

In the May 19, 2008 application for reconsideration, appellant indicated her belief that her continuing back problems were employment related. 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. Appellant indicated that she was submitting additional evidence, but the record does not contain any new medical evidence prior to the May 30, 2008 decision. As noted above, the Board can review only evidence that was before the Office at the time of its final decision. Appellant did not submit new and relevant evidence with her application for reconsideration.

The Board therefore finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Since appellant failed to meet at least one of these requirements, the Office properly denied the application without merit review.

CONCLUSION

Appellant did not meet her burden of proof to submit rationalized medical evidence establishing a lumbar or cervical condition causally related to her federal employment. On application for reconsideration, she did not meet the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly denied merit review.

¹⁰ 20 C.F.R. § 10.605 (1999).

¹¹ *Id.* at § 10.606(b)(2).

¹² *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30 and April 3, 2008 are affirmed.

Issued: January 21, 2009
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