

pain, bulging disc and cervical disc disease.¹ On June 16, 1993 she first realized that these conditions were caused by her federal employment. On the reverse of the claim form, the employing establishment indicated that appellant's exposure to conditions alleged to have caused her injuries was on January 17, 2005. In an undated narrative statement, appellant described her work duties as a distribution clerk, timekeeper and lead sales and service associate from November 2, 1976 to the present. She also described the development of her neck, shoulder and right hip conditions and medical treatment.

Appellant submitted a September 10, 1993 claim for wage-loss compensation for the period May 15 to 25, 1993. An April 8, 1996 report of a physician whose signature is illegible stated that appellant sustained cervical disc disease and provided her physical restrictions. A May 6, 1996 slip of a physician whose signature is illegible stated that appellant was status post cervical fusion. Appellant could perform full-time limited-duty work. Reports dated July 6 and August 1, 2000 purportedly from a physician whose signature is illegible stated that appellant sustained cervical and lumbar disc herniations on May 25, 1993. In a July 12, 1999 report, Dr. Ronald S. Grusd, a Board-certified radiologist, provided the results of a magnetic resonance imaging (MRI) scan of the lumbar spine. His July 12, 1999 MRI scan results of the cervical spine revealed near fusion of C3-4 with no disc visualized. A September 17, 1993 report of Dr. John C. Vander Hulst, a family practitioner, indicated with an affirmative mark that appellant's headaches, empty sella syndrome and right flank/hip pain were caused by work activities performed on May 25, 1993. A June 4, 1999 computerized tomography (CT) scan performed by Dr. C. Holmes, a Board-certified radiologist, revealed a bulging postero-right lateral disc at L4-5.

In a January 24, 2005 letter, the employing establishment controverted appellant's claim, contending that she did not establish fact of injury. It stated that the claimed injury was the same as the injury she sustained on September 10, 1993.² The employing establishment further stated that despite appellant's contention that her alleged injuries were caused by many years of hard work, nothing in particular occurred in 1993 other than her referral to mental health and filing of the September 10, 1993 CA-7 form for a right flank hip injury.

By letter dated January 27, 2005, the Office requested that the employing establishment respond to appellant's allegations and provide the precautions it took to minimize the effects of her work activities and a description of her position. It also advised her that the evidence submitted was insufficient to establish her claim.

Medical records dated March 23 to June 30, 2000 from a clinician, whose signature is illegible, stated that appellant sustained low back sprain/strain. Reports dated February 3 to 11, 2004 of a physician, whose signature is illegible indicated that appellant sustained an exacerbation of chronic low back pain with radicular leg pain on February 2, 2004. An undated

¹ Prior to the instant claim, appellant filed a claim assigned file number xxxxxx473 for an injury she sustained on May 25, 1993. The Office denied her claim on January 18, 1996. Appellant filed a claim assigned file number xxxxxx113 for an injury she sustained on February 2, 2004. The Office accepted her claim for lumbar strain.

² The employing establishment stated that appellant's claim for the September 10, 1993 injury was assigned file number xxxxxx473.

report of Dr. Jacques A. Blanc, a Board-certified radiologist, stated that appellant underwent an intravenous pyelogram.

An appointment slip indicated that appellant was scheduled to be examined by Dr. Thai T. Do, a Board-certified internist, on February 21, 2005.

By decision dated April 20, 2005, the Office denied appellant's claim, finding the medical evidence insufficient to establish that she sustained a cervical condition causally related to the established work-related duties. On May 17, 2005 appellant requested an oral hearing before an Office hearing representative.

In a June 20, 2005 report, Dr. Do reviewed the history of appellant's neck and lower back pain beginning in 1993 and her medical treatment. He reported essentially normal findings on physical and neurological examination with the exception of slight pain with lateral rotation and bend motion bilaterally of the neck and mild tenderness to palpation and some pain on extension in the lower lumbar area. Dr. Do stated that appellant was status post right cervical spine fusion at C3-4 and discectomy. Appellant sustained lower back strain with sciatica symptoms. Dr. Do opined that her work duties caused her disability. He concluded that appellant could continue working with restrictions.

In a February 6, 2006 report, Dr. Do stated that appellant sustained degenerative joint disease of C5 with discogenic back pain and degenerative disc disease of the lumbar spine. He opined that her work duties permanently aggravated her degenerative disc disease.

By decision dated March 21, 2006, an Office hearing representative affirmed the April 20, 2005 decision, finding the medical evidence insufficient to establish that appellant sustained cervical and back conditions causally related to the established work-related duties.

In a March 28, 2006 letter, appellant requested reconsideration of the March 21, 2006 decision and she resubmitted Dr. Do's February 6, 2006 report.

By decision dated September 5, 2006, the Office denied appellant's request for reconsideration. Appellant failed to submit any new evidence and, thus, she was not entitled to further merit review of her claim.

On September 18, 2006 appellant appealed to the Board. In a January 31, 2007 Order Remanding Case, the Board set aside the Office's March 21 and September 5, 2006 decisions and remanded the case for further action.³ It found that the Office hearing representative failed to consider Dr. Do's February 6, 2006 report.

On remand, an Office hearing representative, issued a June 7, 2007 decision finding the medical evidence insufficient to establish that appellant sustained cervical and lumbar conditions causally related to the established work-related duties.

³ Docket No. 06-2117 (issued January 31, 2007).

In an undated letter, appellant requested reconsideration. She contended that in finding Dr. Do's reports insufficient to establish her claim, the Office failed to follow its procedures related to developing and weighing medical evidence which included referring her to an Office physician for examination.

By decision dated November 14, 2007, the Office denied appellant's request for reconsideration. Appellant failed to submit relevant new evidence or argument in support of her claim and, thus, was not entitled to further merit review of her claim.

On December 19, 2007 appellant requested reconsideration and submitted a December 13, 2007 report of Dr. Omar Mora, a physiatrist, who reviewed the history of appellant's employment and family, social and medical background. On physical examination Dr. Mora found full range of motion of the upper extremity with pain in the right shoulder. Right Hawkins and Neers tests were positive. There was tenderness at palpation diffusely with tender points in bilateral upper extremities. Manual muscle test (MMT) was 4/5 bilateral secondary to pain. No swelling was noted. Regarding the lower extremity, Dr. Mora found no swelling. MMT in the right lower extremity was 4/5 and 5/5 in the left lower extremity. There was mild pain in the calf of the right lower extremity. The Homan's test was negative. Regarding the cervical and lumbar spines, Dr. Mora found limited range of motion secondary to pain and tenderness. There was a negative Spurling test regarding the cervical spine. There was positive bilateral facet loading of the lumbar spine. On neurological examination, Dr. Mora reported essential normal findings with the exception of decreased sensation in the cervical spine and right lower extremity. He diagnosed chronic neck pain, myofascial pain syndrome, fibromyalgia, right shoulder impingement syndrome, chronic low back syndrome and facet syndrome. A herniated disc on the lumbar spine was ruled out. Dr. Mora stated that appellant's duties which involved heavy lifting, prolonged standing and repetitive movements like kneeling, squatting, bending, stooping, crouching, pushing, pulling, reaching, twisting and turning, walking, stretching, grasping and gripping could either cause or aggravate the diagnosed conditions. He opined that the diagnosed conditions were directly caused by her work duties. Dr. Mora stated that appellant's chronic conditions were going to be aggravated by her work duties. He concluded that she could continue working with restrictions related to the above noted work activities.

By decision dated February 26, 2008, the Office denied modification of the June 7, 2007 decision. Appellant failed to submit sufficient rationalized medical evidence establishing that she sustained cervical, lumbar and right shoulder conditions causally related to the established work-related duties.

On March 7, 2008 appellant requested reconsideration. In an undated narrative statement, she described her work duties as a timekeeper from December 13, 2000 to December 1, 2006 and her current work duties as a lead sales and service associate from December 2, 2006 to the present. Appellant resubmitted Dr. Mora's December 13, 2007 report.

In an April 10, 2008 decision, the Office denied appellant's request for reconsideration. The evidence submitted was repetitious, cumulative and irrelevant in nature and, thus, insufficient to warrant further merit review of appellant's claim.

In a June 5, 2008 letter, appellant requested reconsideration. She contended that the medical evidence of record was sufficient to establish her claim of injury.

By decision dated June 25, 2008, the Office denied modification of the February 26, 2008 decision. Appellant failed to submit sufficient rationalized medical evidence establishing that she sustained an injury causally related to her employment.

In a July 6, 2008 letter, appellant requested reconsideration. She reiterated her prior contention that the Office failed to follow its procedures regarding developing and weighing medical evidence which included referring her to an Office physician. Appellant submitted a copy of the Office's procedures related to developing and weighing medical evidence and duplicate copies of the Office's April 10 and June 25, 2008 decisions. In correspondence dated August 3 and 13, 2008, appellant requested assistance with her claim from the Office and her congressional representatives. She submitted an article which addressed the type of medical evidence that was necessary for receiving compensation benefits under the Federal Employees' Compensation Act. Appellant resubmitted her undated narrative statement, which described her work duties as a window clerk and timekeeper and the development of her neck, shoulder and right hip conditions and undated request for reconsideration. Correspondence dated August 20, 2007 to March 5, 2008 contained her request for additional medical information from her attending physicians.

By decision dated November 7, 2008, the Office denied appellant's request for reconsideration. The evidence submitted was repetitious, immaterial and irrelevant in nature and, thus, insufficient to warrant further merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act⁴ 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 timely filed within the applicable time limitation period 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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 employment factors identified by the claimant were the proximate cause of the condition for

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁷ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant performed the work duties of a window clerk as alleged. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed lumbar and cervical conditions were caused or aggravated by her work-related duties.

The reports and records dated from April 8, 1996 to February 11, 2004 from physicians and a clinician whose signatures are illegible found that appellant sustained cervical disc disease, cervical and lumbar disc herniations, low back sprain/strain and exacerbation of chronic low back pain with radicular leg pain. This evidence is insufficient to establish her claim. It is unclear from the signature on these reports and medical records whether the examiner was a physician. The Board has previously held that reports submitted that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence, in that they lack proper identification.⁹

The diagnostic test results of Dr. Grusd and Dr. Holmes did not provide an opinion addressing whether the diagnosed lumbar and cervical conditions were causally related to the established work-related duties. The Board finds, therefore, that their reports are insufficient to establish appellant's claim.

Dr. Vander Hulst's September 17, 1993 report indicated with an affirmative mark that appellant's headaches, empty sella syndrome and right flank/hip pain were caused or aggravated by work activities performed on May 25, 1993. Reports which only address causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury are insufficient to establish causal relationship and are of diminished probative value.¹⁰ Dr. Vander Hulst did not explain how the diagnosed conditions were caused or contributed to the

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ *Thomas L. Agee*, 56 ECAB 465 (1985); see *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

established work-related duties. The Board finds that Dr. Vander Hulst's report is insufficient to establish that appellant sustained cervical, lumbar and hip conditions caused or aggravated by the accepted employment duties.

Dr. Blanc's undated report, which revealed that appellant underwent an intravenous pyelogram and the appointment slip, which indicated that she was scheduled for an examination by Dr. Do on February 21, 2005 are insufficient to establish her claim. Neither Dr. Blanc nor Dr. Do addressed whether appellant sustained lumbar and cervical conditions caused or aggravated by the established work-related duties.

Dr. Do's June 20, 2005 report provided essentially normal findings on physical and neurological examination with the exception of slight pain with lateral rotation and bend motion bilaterally of the neck and mild tenderness to palpation and some pain on extension in the lower lumbar area. He found that appellant was status post right cervical spine fusion at C3-4 and discectomy. Dr. Do diagnosed lower back strain with sciatica symptoms. He opined that appellant's work duties caused her disability but, she could continue to work with restrictions. Dr. Do failed to explain how the diagnosed condition was causally related to the established work-related duties. The Board finds that his report is insufficient to establish appellant's claim.

Similarly, Dr. Do's February 6, 2006 report, which found that appellant's degenerative joint disease of C5 with discogenic back pain and degenerative disc disease of the lumbar spine were permanently aggravated by her work duties is insufficient to establish her claim. He did not explain how the diagnosed conditions were aggravated by the established work-related duties.

In a December 13, 2007 report, Dr. Mora provided essentially normal findings on physical examination of the upper extremity with the exception of pain and tenderness in the bilateral upper extremities and positive right Hawkins and Neers test results. He also reported essentially normal findings regarding the lower extremity with the exception of mild pain in the calf of the right lower extremity. Regarding the cervical and lumbar spines, Dr. Mora found limited range of motion secondary to pain and tenderness and positive bilateral facet loading of the lumbar spine. On neurological examination, he reported decreased sensation in the cervical spine and right lower extremity. Dr. Mora diagnosed chronic neck pain, myofascial pain syndrome, fibromyalgia, right shoulder impingement syndrome, chronic low back syndrome and facet syndrome. He ruled out a herniated disc on the lumbar spine. Dr. Mora stated that appellant's duties which involved heavy lifting, prolonged standing and repetitive movements like kneeling, squatting, bending, stooping, crouching, pushing, pulling, reaching, twisting and turning, walking, stretching, grasping and gripping could either cause or aggravate the diagnosed conditions, but he opined that the diagnosed conditions were directly caused by her work duties. He also stated that her chronic conditions were going to be aggravated by her work duties and she could continue to work with restrictions regarding the above noted work activities. Dr. Mora did not explain how the diagnosed conditions were causally related to the established work-related duties and furthermore, his opinion, through the use of the word "could" is equivocal and is insufficient to meet her burden of proof.¹¹ To the extent that he indicated that appellant's

¹¹ *Ricky S. Storms*, 52 ECAB 349 (2001).

conditions would worsen if she returned to work without certain restrictions, the Board has held that fear-of-future injury is not compensable.¹² Dr. Mora's report is insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained lumbar and cervical conditions causally related to the accepted factors of her federal employment as a window clerk. Appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹³ the Office's regulations provide that 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.¹⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁵ 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 of the merits.

ANALYSIS -- ISSUE 2

In a July 6, 2008 letter, appellant disagreed with the Office's June 25, 2008 decision, which found the medical evidence of record insufficient to establish that she sustained cervical and lumbar conditions causally related to her accepted employment factors. The relevant issue is whether her cervical and lumbar conditions were causally related to accepted employment duties is medical in nature. The Board notes that this issue is medical in nature.

On reconsideration, appellant reiterated her prior contention that the Office failed to follow its procedures related to developing and weighing medical which included referring her to an Office physician for examination in finding Dr. Do's reports insufficient to establish her claim. She submitted duplicate copies of her undated narrative statement which described her work duties as a window clerk and timekeeper and the development of her neck, shoulder and right hip conditions, her undated request for reconsideration and the Office's April 10 and June 25, 2008 decisions. However, the submission of this evidence does not require reopening of appellant's claim for merit review because they were previously considered by the Office.

¹² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008).

¹³ *Supra* note 4. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁵ *Id.* at § 10.607(a).

The Board has held that evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁶

Office procedures related to developing and weighing medical evidence, correspondence to the Office and appellant's congressional representatives and attending physicians regarding her claim, and medical article are insufficient to warrant reopening her claim for further merit review. This evidence does not address whether appellant sustained cervical and lumbar conditions causally related to the accepted work-related duties. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.¹⁷

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law; advancing a relevant legal argument not previously considered; or constituting relevant and pertinent new evidence not previously considered by the Office. Appellant did not meet any of the necessary regulatory requirements and the Office properly declined to reopen appellant's claim for further merit review.¹⁸

CONCLUSION

The Board finds that appellant has failed to establish that she sustained cervical and lumbar injuries while in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁶ See *L.H.*, 59 ECAB ___ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

¹⁷ *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁸ *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the November 7, June 25 and February 26, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 2, 2009
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