

Appellant submitted two series of unsigned progress notes, the first series detailing her complaints from March 19, 2008 and the second series detailing her complaints from March 20, 2008. None of these notes contain a diagnosis or offer any indication that they were prepared by a physician. The Office also received a series of progress notes, prepared by a nurse reporting appellant's current complaints as of March 24, 2008.

A March 20, 2008 note signed by Dr. Karolyn Forbes, Board-certified in family medicine, excusing appellant from work on March 24, 2008.

Notes and reports dated April 29, June 9 and July 23, 2008, from by Dr. Charlie C. Yang, an orthopedic surgeon, stated that appellant required physical therapy. Dr. Yang diagnosed lumbago as well as joint and low back pain. He reported that appellant could return to full duty without restriction on July 24, 2008.

Appellant submitted reports from Kacey G. Ciotoli, a physical therapist, who diagnosed lumbago, joint pain and stiffness as well as muscle weakness.

Dr. John P. Clarke, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right hip and pelvis, conducted March 21, 2008, revealed no evidence of acute fracture or dislocation.

By decision dated August 28, 2008, the Office denied appellant's claim. It found the evidence of record was sufficient to establish that the incident occurred as alleged but denied the claim because medical evidence of record did not demonstrate that the identified incident caused a personal injury.

Appellant disagreed and on December 9, 2008 requested reconsideration.

Appellant submitted copies of Dr. Yang's April 29, June 9 and July 23, 2008 notes and reports.

Appellant submitted a note dated December 5, 2008 in which Mavis Selena James reported witnessing appellant's fall.

By decision dated January 8, 2009, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit

¹ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.²

An employee who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not satisfied her burden of proof to establish that she sustained an injury causally related to her employment-related fall on March 19, 2008. The Office accepted that on March 19, 2008 she slipped and fell on the premises in the performance of duty. As noted above, appellant's burden is to establish, through submission of medical evidence, that the identified employment incident caused an injury. The evidence of record does not establish that she sustained an injury causally related to the accepted incident and therefore appellant has not met her burden of proof.

Appellant submitted several series of unsigned progress notes. These reports are insufficient to satisfy her burden of proof because their authors cannot be identified as physicians.⁴ These reports do not constitute probative medical evidence sufficient to satisfy appellant's burden of proof.⁵

Appellant submitted reports from a nurse. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.⁶ Thus, these reports have no probative medical value and are insufficient to satisfy appellant's burden of proof.

Dr. Forbes' note has little probative value because she did not provide findings on examination, a firm diagnosis or a rationalized medical opinion explaining if and how appellant's

² *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *See Roy L. Humphrey*, 57 ECAB 238 (2005); *see Naomi A. Lilly*, 10 ECAB 560, 574 (1959).

⁴ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

⁵ Appellant also submitted treatment reports from Piedmont Health Services. These reports are insufficient to satisfy appellant's burden of proof because, as they bore an illegible signature, their authors cannot be identified as a physician. *Vickey C. Randall*, *supra* note 4; *Merton J. Sills*, *supra* note 4 (Reports not signed by a physician lack probative value).

⁶ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

absence from work on March 24, 2008 was causally related to the employment incident.⁷ As such, Dr. Forbes' note is insufficient to satisfy appellant's burden of proof.

Dr. Yang's April 29, June 9 and July 23, 2008 notes and reports are also of little probative value. He diagnosed back, joint and right hip pain as well as lumbago. These reports lack a rationalized medical opinion explaining how the identified employment incident caused or aggravated a compensable medically diagnosed condition. Pain is a symptom, not a compensable medical diagnosis.⁸ Although Dr. Yang also diagnosed lumbago, the Board notes that "lumbago" is merely a generic umbrella term for lower back pain which is not a compensable medical diagnosis under the Act. This deficiency reduces the probative value of Dr. Yang's notes and, as such, they are insufficient to satisfy appellant's burden of proof.

Dr. Clark's report is also of little probative value as it lacks a compensable medically diagnosed condition and a rationalized opinion explaining how the identified employment incident caused a compensable diagnosed condition.

On appeal appellant argued that, while evidence from her physicians lacked a firm diagnosis, the reports from her physical therapists contained a diagnosis of lumbago. Because healthcare providers such as nurses, acupuncturists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.⁹ Thus, these reports are of no probative medical value and are insufficient to satisfy appellant's burden of proof.

Because appellant has not submitted competent probative rationalized medical evidence establishing that the identified employment incident caused a personal injury, she has not met her burden of proof.

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,¹⁰ 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.¹¹ 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

⁷ Reports and notes lacking an opinion on causal relationship are of little probative value, *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

⁸ *Robert Broome*, 55 ECAB 339 (2004).

⁹ 5 U.S.C. § 8101(2); *see also G.G.*, *supra* note 6; *Jerre R. Rinehart*, *supra* note 6; *Barbara J. Williams*, *supra* note 6; *Jan A. White*, *supra* note 6.

¹⁰ 5 U.S.C. §§ 8101-8193. 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).

¹¹ 20 C.F.R. § 10.606(b)(2).

of the date of that decision.¹² 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.¹³

ANALYSIS -- ISSUE 2

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law. Her reconsideration request did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant was not entitled to reconsideration under the first two enumerated statutory grounds.

As to the third enumerated ground, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office. The relevant issue was whether the identified employment incident caused an injury. This is a medical issue which can only be proved by a preponderance of the probative and substantial medical opinion evidence.

In support of her request for reconsideration, appellant submitted duplicates of reports and notes that were previously received by the Office. As these documents are duplicative, they do not constitute new evidence not previously considered by the Office.¹⁴

The note from the witness, though new, was not relevant or pertinent as the Office had accepted that the incident of March 19, 2008 occurred as alleged. As the witness is not a physician, her statement is not pertinent to the medical issue underlying appellant's case as the Board has held that lay individuals are not competent to render a medical opinion.¹⁵ This note is of no probative value and provides no basis for reopening appellant's case for merit review.

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁶ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ Therefore, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).

Because appellant failed to meet at least one of the standards under the applicable procedures, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.

¹² *Id.* at § 10.607(a).

¹³ *Id.* at § 10.608(b).

¹⁴ See *Susan A. Filkins*, 57 ECAB 630 (2006).

¹⁵ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁶ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁷ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

CONCLUSION

The Board finds that appellant has not satisfied her burden of proof to establish that she sustained an injury in the performance of duty on March 19, 2008. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT January 8, 2009 and August 28, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board