

mail and getting in and out of her vehicle while in the performance of duty.¹ She first became aware of the condition and its relation to her work on July 11, 2008. Appellant stopped work on July 20, 2008. She submitted disability certificates dated July 14 and 17, 2008 from Drs. Richard K. Bell and Alyssa Shaw, both Board-certified in family medicine. They requested that she be excused from work until July 17, 2008.

In a letter dated July 22, 2008, the employing establishment controverted the claim. It noted that appellant had not provided any medical evidence which discussed how specific work factors caused her condition.

By letters dated July 28, 2008, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed. It explained that the physician's opinion was crucial to her claim and allotted her 30 days to submit the requested information.

In a July 21, 2008 disability certificate, Dr. Shaw advised that appellant was disabled from work from July 17 to 24, 2008 due to repetitive motion. In an August 5, 2008 report, she noted that appellant had left hip pain, left leg weakness and greater trochanteric bursitis. Dr. Shaw advised that appellant needed to work light duty for the next two weeks. She prescribed restrictions that precluded appellant from standing for more than 20 minutes, no driving and no lifting greater than 10 pounds.

The Office received reports dated September 23, 2008 from Dr. Blair Lindblad, Board-certified in family medicine, who noted that appellant was seen for a recheck of left hip pain.

In a September 29, 2008 report, Dr. Lloyd E. Witham, a Board-certified orthopedic surgeon, advised that appellant had complaints of left hip pain. He noted that x-rays of the hips appeared normal. Dr. Witham recommended a magnetic resonance imaging (MRI) scan of the left hip. He stated that "certainly long history of left hip pain which apparently is related to her work activities made worse with sorting and pivoting on this leg."

By decision dated October 15, 2008, the Office denied appellant's claim. It found that the evidence supported that the claimed occupational activities occurred; however, she failed to submit sufficient medical evidence to support her claim.

On October 22, 2008 appellant requested reconsideration.

In a November 6, 2008 decision, the Office denied appellant's request for reconsideration finding that the request was insufficient to warrant further merit review.

Appellant requested reconsideration on November 7, 2008 and submitted additional medical evidence and treatment notes, including a November 11, 2008 prescription from Dr. Shaw diagnosing lumbosacral strain that caused hip and back pain. An August 26, 2008 treatment note from Dr. Lindblad repeated that appellant was seen for left hip and low back pain and provided limited-duty restrictions. He also saw appellant on September 2, 2008 and noted

¹ The record reflects that appellant has four prior claims. They are not before the Board on the present appeal.

that she was seen for low back pain and a recheck of her trochanteric bursitis. In a September 10, 2008 treatment note, Dr. Chad Scarola, Board-certified in family medicine, saw appellant for left hip pain and advised no prolonged standing or walking. In an October 21, 2008 treatment note, Dr. Lindblad noted that appellant was seen again for her left hip pain. He treated her on January 13, 2009 reiterating that she had pain to her left hip and lumbosacral strain.

In a February 10, 2009 merit decision, the Office found that the medical evidence was not sufficient to establish that appellant's work factors caused her low back or left hip conditions.

On April 6, 2009 appellant requested reconsideration. She noted that she was enclosing a report from her physician which explained her diagnosis and provided an opinion that it was due to the repetitive motion of pivoting and other tasks required of mail carriers. However, no report was enclosed.

On April 20, 2009 the Office referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Clarence H. Fossier, a Board-certified orthopedic surgeon.

In a report dated May 22, 2009, Dr. Fossier described appellant's work duties and medical treatment. On examination appellant had lordosis in the lumbar spine and full range of motion. Dr. Fossier noted that lateral bending to the left reproduced some pain in the left hip groin region. He advised that appellant had full range of the motion of the hips, knees and ankles. Dr. Fossier determined that full flexion and external rotation of the left hip reproduced low back pain and left groin pain. He indicated that full flexion and external rotation of the right hip also reproduced pain in the left lumbar region. Dr. Fossier stated that appellant had "low back pain, left hip pain, and bilateral knee pain, none of which are more probably than not related to her work." He explained that pivoting to case mail would not cause any of the diagnosed conditions. While appellant had evidence of bilateral patellofemoral crepitus, this was "more consistent with her body habitus and age than they are from traumatic etiology." Dr. Fossier noted that appellant's "left hip, left leg region, bilateral knee pain and her low back pain are not affected by any/all of the factors of her postal employment. MRI scan of each area are within normal limits." Dr. Fossier stated that appellant's work duties did not aggravate any of her conditions. He found that she did not need any work restrictions.

By decision dated June 16, 2009, the Office denied modification of its prior decisions. It found that Dr. Fossier represented the weight of the medical evidence as he unequivocally opined that the claimed conditions were not related to the claimant's work activities.

On July 18, 2009 appellant requested reconsideration.

By decision dated August 11, 2009, the Office denied appellant's request for reconsideration finding that it was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 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 causal relationship, generally, 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.⁵

ANALYSIS -- ISSUE 1

The evidence supports that appellant's job involved casing mail and stepping out of her vehicle while working. The Board finds that she submitted insufficient medical evidence to establish that her left hip or other conditions were caused or aggravated by casing mail, getting out of her vehicle or any other factor of her federal employment.

In a September 29, 2008 report, Dr. Witham noted treating appellant for left hip pain but advised that hip x-rays appeared normal. He noted that she had a long history of hip pain "apparently" related to her work activities and "made worse with sorting and pivoting on this leg." The Board notes that pain in the absence of objective findings is generally a symptom and

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

not a firm medical diagnosis and is not compensable.⁶ Dr. Witham's opinion that appellant's leg pain was "apparently" related to her work is equivocal. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁷ The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation.⁸ The Board finds that Dr. Witham did not provide an unequivocal opinion explaining how particular work factors caused or aggravated a diagnosed medical condition.

The disability certificates from Drs. Shaw and Bell dated from July 2008 requested that she be excused from work as she was disabled due to repetitive motion. The August 5, 2008 report and the November 11, 2008 prescription note of Dr. Shaw did address causal relationship between appellant's condition and her employment. In reports dated August 26, 2008 to January 13, 2009, Dr. Lindblad treated appellant for left hip pain and low back pain and provided limited-duty restrictions. He did not address whether her employment activities caused or aggravated her hip or low back. The September 10, 2008 treatment note from Dr. Scarola, who saw her for left hip pain, similarly failed to address causal relationship. The Board notes that medical reports that do not offer an opinion regarding the cause of an employee's condition are of diminished probative value.⁹ Consequently, the Board finds that the medical evidence submitted by appellant was insufficient to establish her claim.

The Office referred appellant to Dr. Fossier who, in a May 22, 2009 report, provided a detailed review of her medical history, work activities and set forth findings on examination. Dr. Fossier reported full range of the motion of the hips, knees and ankles with some pain in the left hip groin region on lateral bending. He noted that objective testing was normal found that appellant's low back pain, left hip pain and bilateral knee pain, were not related to her work. Dr. Fossier explained that pivoting to case mail would not cause any of the diagnosed conditions. He opined that, while appellant had evidence of bilateral patellofemoral crepitus, this was more consistent with her body habitus and age than from any traumatic etiology. Dr. Fossier concluded that appellant's work duties did not aggravate any conditions and that there was no need for work restrictions.

There is no probative medical evidence that supports appellant's employment claim that her duties caused or aggravated her left hip or back conditions. Appellant has not met her burden of proof to establish that she sustained an occupational disease causally related to factors of employment.

⁶ See *Ruth Seuell*, 48 ECAB 188 (1996).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ See *A.D.*, 58 ECAB 149 (2006).

On appeal, appellant submitted additional medical evidence. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”¹²

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

Appellant disagreed with the Office’s June 16, 2009 decision, which denied her claim of an injury in the performance of duty. The underlying issue on reconsideration was whether appellant established that she sustained a left hip or low back condition due to factors of her federal employment.

In her July 18, 2009 request for reconsideration, appellant merely requested reconsideration by checking a box on a form. She did not submit any additional evidence or argument in support of her request. Appellant did not identify a specific point of law that was erroneously applied or interpreted in the Office’s denial of her claim or advance a relevant legal argument not previously considered. She also failed to submit any relevant and pertinent new evidence on reconsideration. Consequently, the Office properly denied appellant’s reconsideration request as it did not meet any of the regulatory standards for reopening her claim.

¹⁰ 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

¹³ *Id.* at § 10.608(b).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 11 and June 16, 2009 are affirmed.

Issued: October 4, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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