

a psychiatrist for depression and anxiety and had chronic pancreatitis from medications.¹ The employing establishment noted that she was working sedentary duty.

In support of the July 8, 2009 claim, appellant submitted a June 9, 2009 report in which Dr. Allan C. Gocio, a Board-certified neurosurgeon, advised that she reached maximum medical improvement on October 10, 2008. Dr. Gocio stated that she could work eight hours and provided restrictions of no lifting greater than 15 pounds; no sitting, standing or walking greater than two hours continuous; to limit stooping, bending and twisting as much as possible, with operating a light vehicle within these restrictions. In letters dated June 26 and 29, 2009, he advised that she could not return to work until her work activities were tailored to fit his restrictions.

The employing establishment submitted a description of appellant's job duties as a community health nurse, stating that she received and reviewed information and took action regarding services provided to veterans, kept appropriate documentation, did routine follow-up, and attend scheduled training and meetings. Appellant was to complete nursing home and home visits as assigned.

By letter dated August 13, 2009, the Office advised appellant that the medical evidence submitted was insufficient to establish the claim and advised her to submit a comprehensive medical report in which a physician provided results of examination, treatment and diagnoses, and advised if the claimed exposure caused a diagnosed condition. In responsive statements, appellant described the May 26, 2007 employment injury and stated that her life had thereafter changed due to severe back pain. She stated that her recent performance appraisal was disappointing, that she felt she was the subject of retaliative harassment and that her current job was not what she had trained to do and was outside what her doctor stated she could do. Appellant stated that her driving was restricted to two hours a day with position changes as needed every 15 minutes, and that she had to drive 40 minutes to get to work, and that she then had to drive to nursing homes in Illinois, Indiana and Kentucky. She further alleged that not enough time was allotted for her to complete her duties and stop, get out of the car and stretch, and that she could not take prescribed medications while driving.

In an August 29, 2009 report, Annette Vaillancourt, Ph.D., a licensed clinical counselor, advised that appellant had been under her care since July 13, 2009 for post-traumatic stress disorder, social anxiety, sleep problems and depression, and that her symptoms began after she

¹ Appellant actually filed a recurrence claim under Office file number xxxxxxx506. Under that claim the Office accepted that she sustained an employment-related lumbar strain and aggravation of displacement of lumbar intervertebral disc from L4 to S1 when she was hit by an agitated patient on May 26, 2007. In a November 29, 2010 decision, the Board found that the Office properly determined that an overpayment in compensation in the amount of \$13,319.30 had been created and that appellant was at fault for the overpayment period commencing subsequent to the first direct deposit after her return to work on October 27, 2008 but that she was not at fault for the first direct deposit of compensation, covering the period October 27 through November 22, 2008. The case was remanded for a determination of whether she would be entitled to waiver for this brief period. Regarding the instant claim, by letter dated July 30, 2009, the Office informed her that, as she was claiming that additional work factors caused her newly claimed condition, she should file an occupational disease claim. It thereafter adjudicated the instant claim as an occupational disease, and appellant also submitted CA-7s, claims for compensation, for the period June 3 to August 30, 2009.

was attacked by a patient at work. She advised that appellant was temporarily totally disabled due to psychological symptoms associated with the attack and stress related to the exacerbation of physical pain because she was also required to drive long distances on a tight time schedule at work which increased her physical pain, and was required to do public speaking which exacerbated her social anxiety.

In a September 1, 2009 duty status report, Dr. Gocio diagnosed lumbar disc herniation with lumbar degenerative disc disease with spasm and radiculopathy. He advised that appellant could return to work on November 1, 2009 with a lifting restriction of 15 pounds continuous and 20 pounds intermittent; sitting restricted to 15 minutes a day; standing to 2 hours and 15 minutes per day; fine manipulation for 8 hours a day; reaching above the shoulder for 15 minutes a day; and driving for 45 minutes a day. On September 11, 2009 Dr. Gocio advised that appellant was driving more than 2 hours continuously and was working 10 hours a day, both outside her restrictions and that even if she volunteered to work 10-hour days, this was not suitable. He stated that she should drive no more than two hours continuous and stop and take short breaks to change positions, get out and stretch, and that driving any distance would be suitable as long as she paced herself and did not drive more than two hours at a time. Dr. Gocio stated that he had not identified any areas in her work description that would not be suitable for her.

By decision dated September 24, 2009, the Office accepted the evidence established that appellant did perform the duties she alleged, but denied the claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to these established employment factors.

LEGAL PRECEDENT

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. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

Office regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."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

² 5 U.S.C. §§ 8101-8193.

³ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ 20 C.F.R. § 10.5(ee).

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury caused by her accepted work duties after her return to work in October 2008 because the medical evidence is insufficient to establish causal relationship. Dr. Gocio, the attending neurosurgeon, submitted a number of reports dated from June 9 to September 11, 2009. He advised that appellant had reached maximum medical improvement on October 10, 2008 and provided restrictions to her activity. In reports dated June 26 and 29, 2009, Dr. Gocio advised that she could not return to work until the job was tailored to fit her restrictions and advised that she was working outside her restrictions. While he diagnosed lumbar disc herniation with lumbar degenerative disc disease with spasm and radiculopathy on an Office form report, stating that it was due to injury, he did not provide an explanation or opinion as to how the claimed factors of excessive sitting and driving caused a new occupational injury.

Likewise, Dr. Vaillancourt merely advised that appellant's stress was due in part because she was required to drive long distances on a tight time schedule at work which increased her physical pain. Pain is a symptom, not a compensable medical diagnosis.⁹ Appellant did not indicate on her claim form that she was filing an emotional condition claim, merely noted that she was seeing a psychiatrist for depression and anxiety.

⁵ *Supra* note 3.

⁶ *D.G.*, 59 ECAB 734 (2008).

⁷ *Id.*

⁸ *Supra* note 3.

⁹ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁰ It is appellant's burden to establish that she has a new back condition causally related to factors of her federal employment. As she submitted no evidence to show that she sustained a new occupational disease caused by her employment duties after she returned to work in October 2008, she did not establish that she sustained a new employment-related back condition.

The Board however notes that to the degree that appellant is claiming that she was working outside restrictions in her initial claim for a May 26, 2007 employment injury, or that the light duty was withdrawn, this would be a recurrence of injury of the initial claim, and should be adjudicated as such under file number xxxxxx506, as should any claim for a consequential emotional condition.¹¹

CONCLUSION

The Board finds that appellant did not establish that she sustained a new injury causally related to factors of her federal employment after her return to work in October 2008.

¹⁰ *A.D.*, 58 ECAB 149 (2006).

¹¹ The Board notes that appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence; however, as its review of the case is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c)(1); *S.J.*, 60 ECAB ____ (Docket No. 08-2048, issued July 9, 2009).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 24, 2011
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