U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of KAREN L. McCLARAN and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, Tenn.

*Docket No. 96-534; Submitted on the Record;*
*Issued January 15, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on September 27, 1993; (2) whether the Office of Workers' Compensation Programs properly denied modification of the prior decision; and (3) whether the Office abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions on appeal and the entire case record. The Board finds that the December 15, 1994 decision of the Office hearing representative is in accordance with the facts and law in the case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that on August 23, 1995 the Office properly denied modification of the December 15, 1994 decision of the Office hearing representative. On February 7, 1995 appellant requested reconsideration and submitted a report dated January 31, 1995 from Dr. G. William Davis, her treating Board-certified orthopedic surgeon.[1] By decision dated August 23, 1995, the Office again denied the claim, finding Dr. Davis' January 31, 1995 report insufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim[3] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[4] that the claim

[1] The Board notes that the record contains a recurrence claim, Form CA-2a, filed by appellant on September 22, 1994 alleging that the September 27, 1993 injury was a recurrence of a February 11, 1987 injury. As the Office has not issued a final decision regarding this claim, it is not before the Board. 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[4] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

was timely filed within the applicable time limitation period of the Act,[5] 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.[6] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.[8]

Causal relationship is a medical issue,[9] and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.[10] Moreover, 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.[11] Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[12]

In his January 31, 1995 report, Dr. Davis reported that he and appellant "very carefully reviewed" her history and she reported that she was first injured at work in February 1987 after which she was off work for a very short period of time and returned to work with subclinical symptoms that did not require medication -- "just an aggravating pain that she lived with every day." "According to her history," she rehurt her back at work on September 27, 1993 which, in the physician's opinion, aggravated the condition that had begun in 1987. Dr. Davis also noted that appellant did not "have any problems" prior to 1987. In the report, however, Dr. Davis did not identify specific employment factors as the cause of appellant's condition and, as medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof,[13] appellant did not provide the

[5] 5 U.S.C. § 8122.

[6] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[7] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See Robert A. Gregory*, 40 ECAB 478 (1989).

[9] *Mary J. Briggs*, 37 ECAB 578 (1986).

[10] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams, supra* note 7.

[11] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

[12] *Larry Warner*, 43 ECAB 1027 (1992).

[13] *See Lourdes Davila*, 45 ECAB 139 (1993).

necessary medical evidence to establish that the February 23, 1993 employment incident caused her medical conditions. The Office, in its August 23, 1995 decision, therefore properly declined to modify the hearing representative's decision.

Finally, the Board finds that the Office did not abuse its discretion in denying merit review on November 21, 1995.

On October 13, 1995 appellant requested that the Office reconsider her claim and submitted new evidence that consisted of records pertaining to an accepted back injury that occurred in 1987[14] and an October 9, 1995 report from Dr. Davis. By decision dated November 21, 1995, the Office denied appellant's request, finding that Dr. Davis' October 9, 1995 report was essentially repetitious and that the evidence regarding appellant's 1987 injury was irrelevant. Thus, the evidence was insufficient to warrant merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[15] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[16] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[17]

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. While she submitted evidence pertaining to a 1987 employment injury, this evidence provides no information regarding the cause of the claimed September 27, 1993 injury. As Dr. Davis merely repeated diagnoses and opinions contained in reports previously considered by the Office,[18] the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.138. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[19] The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

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[14] This evidence consisted of, *inter alia*, a CA-1 claim form indication that on February 12, 1987 appellant hurt her back while lifting a heavy parcel, a CA-3 form indicating that she returned to light duty on April 15, 1987, and medical evidence with a diagnosis of disc protrusion at L4-5, left.

[15] 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 his own motion or on application." 5 U.S.C. § 8128(a).

[16] 20 C.F.R. §§ 10.138(b)(1) and (2).

[17] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[18] Other than eliminating the sentence, "This is according to her history," Dr. Davis' October 9, 1995 report, is essentially word-for-word that of the January 31, 1995 report.

[19] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated November 21 and August 23, 1995 and December 15, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 15, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member