

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN D. ADAMS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, MD

*Docket No. 00-2822; Submitted on the Record;
Issued July 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury on March 12, 1999 in the performance of duty causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on March 12, 1999.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.⁵

¹ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

² See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

³ See *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Id.*

On March 12, 1999 appellant, then a 52-year-old claims clerk, filed an occupational disease claim alleging that she sustained a back injury while pulling folders from a tub at work.

By decision dated January 10, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained a medical condition causally related to factors of her employment.

By letter dated January 18, 2000 and postmarked April 16, 2000, appellant requested a review of the written record.

By decision dated September 6, 2000, the Office denied appellant's request for a hearing on the grounds that the request was untimely and that the issue in the case could be resolved by a request for reconsideration and the submission of additional evidence.

In a report dated March 11, 1999, a physician indicated that appellant had musculoskeletal back pain which occurred after she bent over a tub at work. He checked the block marked "yes" indicating that the condition was causally related to appellant's employment. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁶ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁷

In disability certificates dated March 15 and June 24, 1999, a physician diagnosed back pain but did not indicate the cause of the condition. Therefore, this medical evidence is not sufficient to establish that appellant sustained an injury on March 12, 1999 causally related to factors of her employment.

In a disability certificate dated October 26, 1999, a physician diagnosed a back strain. However, he did not indicate the cause of the condition and; therefore, this certificate does not establish that appellant sustained a work-related injury on March 12, 1999.

In a report dated December 29, 1999, Dr. Lisa Kistner, appellant's attending internist, stated that appellant was seen on March 12, 1999 for musculoskeletal pain which appellant attributed to bending over a tub of mail and was seen again on June 24, October 26 and November 1, 1999 for musculoskeletal low back pain, each time after unloading mail trays. She provided findings on examination and stated that x-rays revealed mild spondylosis at L3-4 and degenerative sclerotic changes in the L4-5 and L5-S1 facet joints. Dr. Kistner stated: "the symptoms [appellant] had could have been cause[d] by the activities she described and, as they occurred after those activities, it is reasonable that the symptoms were cause[d] by the activities." However, she failed to provide a definite diagnosis of appellant's condition and her opinion as to causal relationship is speculative. Dr. Kistner did not explain, with medical rationale, how appellant's symptoms were causally related to her job activities of March 12,

⁶ See *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁷ *Id.*

1999. Therefore, this report is not sufficient to establish that appellant sustained an injury on March 12, 1999 causally related to factors of her employment.

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁸ As section 8124(b)(1) is unequivocal in setting forth the time limitation period for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁹ As appellant's request for a hearing was postmarked April 16, 2000, more than 30 days after the Office's January 10, 2000 decision, appellant was not entitled to a hearing as a matter of right. The Office then exercised its discretion and properly denied appellant's request for a hearing on the grounds that the issue in the case could be resolved equally well by a request for reconsideration and the submission of additional evidence.

The September 6 and January 10, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 24, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ See 5 U.S.C. § 8124(a).

⁹ See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990); see also 20 C.F.R. § 10.616.