

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALFREDA M. ROYSTER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, NJ

*Docket No. 00-2353; Oral Argument Held February 7, 2002;  
Issued May 15, 2002*

Appearances: *Yvonne Allen*, for appellant; *Julia Mankata, Esq.*, for the Director,  
Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her claimed lower back and uterine conditions were sustained in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 48-year-old food service worker, filed a claim for traumatic injury on December 26, 1993, alleging that she injured her lower back when the elevator in which she was riding dropped one floor and became stuck. She alleged that she has not been able to work since this incident.

On August 19, 1997 appellant filed a Form CA-2 claim for benefits based on an occupational condition. She alleged that she developed a lower back condition and a herniated disc at L5-S1 due to pushing 300-pound food carts and lifting 30- to 50-pound objects.<sup>1</sup> Appellant subsequently stated that she developed a uterine condition and underwent a hysterectomy, which she claimed was caused by factors of her employment.

By decision dated February 20, 1998, the Office found that appellant failed to submit sufficient medical evidence establishing that the claimed conditions and/or disability were caused or aggravated by factors of her employment.

By letter dated February 25, 1998, appellant requested an oral hearing, which was held on September 2, 1998.

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<sup>1</sup> On June 25, 1999 the Office combined these two claims, in addition to a third claim.

By decision dated October 8, 1998, an Office hearing representative affirmed the previous Office decision.

By letter dated November 16, 1998, appellant requested reconsideration. Appellant submitted an x-ray report dated January 29, 1997 from Dr. Micheal Corey, a chiropractor, and the results of an October 27, 1998 magnetic resonance imaging (MRI) scan. Dr. Corey submitted a handwritten note which was received by the Office on November 20, 1998, in which he stated: "Please note that a subluxation is demonstrated at the L3 and L4 levels. This is most obvious upon visualization of the A-P [anterior to posterior] view taken on October 27, 1998."

By decision dated February 12, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter to her congressional representative dated March 4, 1999, which was subsequently forwarded to the Office appellant requested reconsideration of the Office's February 12, 1999 decision.

By decision dated May 4, 1999, the Office denied reconsideration.

By letter dated May 9, 1999, appellant requested reconsideration. She submitted a November 15, 1998 report from Dr. Peter F. Di Paolo, an orthopedic surgeon, who noted appellant's complaints of lower back pain during his October 19, 1998 examination and stated that results of her January 29, 1997 showed a central to right paracentral herniated disc at L5-S1 causing indentation on the S1 nerve root. Dr. Di Paolo advised that appellant also had degenerative disc disease. He related a history of appellant having fallen two and one-half stories while trapped in an elevator on December 26, 1993, causing her to fall on her back. Dr. Di Paolo indicated that a fall of this nature can result in an axial load, causing rupture of the lumbosacral spine discs. He concluded that all of appellant's concurrent medical conditions were related to her employment and that she had been permanently, totally disabled since August 1994.

By decision dated June 25, 1999, the Office denied reconsideration.

By letter dated August 19, 1999, appellant requested reconsideration. She submitted an August 26, 1999 MRI report which diagnosed anterior bulging of the L5-S1 disc, desiccation of the L4-5 and L5-S1 discs, with components of a herniated L5-S1 disc with bilateral nerve and thecal compression.

By decision dated October 4, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated December 30, 1999, appellant requested reconsideration.

By decision dated March 3, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant failed to meet her burden of proof to establish that her claimed lower back and uterine condition were sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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.<sup>3</sup> 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.<sup>4</sup>

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.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.<sup>5</sup>

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.<sup>6</sup>

In this case, appellant has not submitted sufficient medical evidence indicating that appellant's lower back and uterine conditions were causally related to either the December 26, 1993 employment incident or her usual duties of pushing heavy food carts. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

does not raise an inference that there is a causal relationship between the two.<sup>7</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. In the instant case, none of the medical reports pertaining to the claimed conditions contain any rationalized medical opinion addressing and explaining why her claimed conditions were causally related to factors of incidents of her employment.

The reports from Drs. Di Paolo and Corey do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment and her lower back and uterine conditions. Causal relationship must be established by rationalized medical opinion evidence; however, these reports did not contain a probative, rationalized medical opinion indicating that her claimed conditions were causally related to factors of his federal employment. Dr. Di Paolo stated in his November 15, 1998 report that appellant had complaints of lower back pain and advised that appellant had a central to right paracentral herniated disc at L5-S1 causing indentation on the S1 nerve root based on a January 29, 1997 MRI scan, in addition to degenerative disc disease. He opined that appellant's December 26, 1993 fall in an elevator could have caused a rupture of the lumbosacral spine discs, that her current medical conditions were related to her employment and that she had been permanently, totally disabled since August 1994. However, Dr. Di Paolo's conclusions were of a summary nature and his report did not contain a rationalized medical opinion addressing and explaining why her claimed conditions and disability were caused by factors or incident of her employment. Dr. Corey stated findings on examination and concluded that an October 27, 1998 MRI scan showed subluxation at the L3 and L4 levels; however, he did not indicate that this condition was causally related to appellant's employment. Accordingly, as appellant failed to meet her burden to submit probative, rationalized medical evidence establishing that her claimed lower back and uterine conditions were caused by factors or incidents of her employment, the Office properly denied appellant's claim for compensation.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup>

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<sup>7</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> 20 C.F.R. § 10.607(b)(1). See generally 5 U.S.C. § 8128(a).

<sup>10</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in prior decisions or is not pertinent to the issue on appeal. Additionally, appellant's letters failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated March 3, 2000, October 4, June 25 and May 4, 1999 are hereby affirmed.

Dated, Washington, DC  
May 15, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member