

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANNIE D. RASBERRY and U.S. POSTAL SERVICE,  
POST OFFICE, Rocky Mountain, NC

*Docket No. 03-1599; Submitted on the Record;  
Issued September 26, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury in the performance of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On January 24, 2001 appellant, then a 59-year-old mail processor, filed a notice of traumatic injury claim for compensation (Form CA-1) alleging that, while setting up a machine, she felt a sharp pain run through her left shoulder blade and continued into her right shoulder blade. Appellant submitted a January 24, 2001 form report from Dr. Mary Conley, an internist, who diagnosed muscle spasms after finding reduced range of motion and tenderness. Appellant also submitted a January 26, 2001 report from Dr. Tom Rand, an orthopedist, who indicated that appellant described pain and some limited range of motion in her neck. He indicated that x-rays revealed severe spurring at C5-6. Dr. Rand noted that he originally treated appellant in 1998 for an injury associated with work, but had not seen her since and that appellant was no better or worse than in 1998. Dr. Rand indicated that the diagnosis in 1998 was foraminal stenosis that he treated conservatively. He noted that appellant had been treated for neck and thoracic spine pain and that x-rays showed degenerative arthritis and narrow areas of the thoracic spine. Dr. Rand indicated that the spurs at C4-5 were present in 1998 but showed some healing. He opined that appellant had a well-defined pathology of the cervical spine that constituted the etiology of her symptoms and that her pain was principally caused by her work. In a February 12, 2001 progress note, Dr. Rand indicated that appellant continued to be symptomatic and her prognosis for significant improvement was very poor.

The record indicates that between 1995 and 2000 appellant filed seven workers' compensation claims. In 1995 the Office accepted a claim for left forearm strain. In 1997 and 1998, the Office denied claims for back strain. In 1998 appellant had claims accepted for neck, shoulder, cervical and back strain. In 1999 the Office accepted a wrist injury claim. In 2000 appellant filed a claim for pain in her head and right side of her neck and shoulder that is pending.

The record contains an April 27, 1998 report from Dr. Lawrence McNamme, an orthopedist, who indicated that a magnetic resonance imaging scan revealed multilevel cervical disc disease with spondylosis and lordotic reversal, left foraminal stenosis at C4-6 with suggested left C7 nerve root impingement. In a March 26, 2001 form report, Dr. Natalie Doyle, an internist, diagnosed cervicgia and degenerative joint disease.

In an April 11, 2001 letter, the Office advised that cervicgia and muscle spasms were not a secure diagnosis and the evidence suggested that she had preexisting spinal conditions. In an April 27, 2001 letter, appellant wrote that she had swelling and spasms in her back and shoulders due to repetitive lifting at work. Appellant noted that the air conditioning at work caused her back to ache, that she went to the urgent care unit on several occasions and that the medications she takes for her pain have caused stomach irritations.

In a May 16, 2001 decision, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish a causal relationship between her employment duties and current medical conditions. The Office noted that Dr. Rand did not specifically address any injury on January 24, 2001 as alleged.

In an August 17, 2001 letter, appellant requested reconsideration and submitted a July 31, 2001 report from Dr. Conley, who noted that she concurred with Dr. Rand that appellant's muscle spasm condition was causally related to her employment.

In an August 17, 2001 decision, the Office denied reconsideration of the May 16, 2001 decision, finding the report of Dr. Conley to be cumulative of her prior opinion.

On September 13, 2001 appellant filed a claim for recurrence of total disability due to a March 17, 1998 shoulder and neck injury, effective January 24, 2001. In July 9, 2002 letter, the Office informed appellant that the facts of her claim might support a new injury on January 24, 2001, not a recurrence. On September 15, 2001 appellant took disability retirement.

In an April 16, 2002 letter, appellant requested reconsideration. She submitted the results of a July 10, 2001 functional capacity evaluation which indicated that she was only capable of light duty. In a January 23, 2002 form report, Dr. Doyle stated that appellant presented with tenderness to palpation and decreased range of motion. On examination Dr. Doyle found thoracic degenerative joint disease, cervical spine early arthritis and degenerative joint disease and severe spur formations. While relating appellant's condition to an August 8, 2000 injury, she opined that appellant would continue to experience muscle spasms and pain with overuse. In an August 30, 2002 report, Dr. Doyle wrote that over the last few years appellant had experienced considerable trouble with neck and shoulder pain resulting in her not working. She opined that appellant's condition was caused by the repetitive nature of her work as her symptoms improved when she was not working, but returned when she returned to work.

In a November 27, 2002 decision, the Office denied modification of its prior decisions, finding the medical evidence insufficient as it lacked a rationalized opinion on the causal relationship between appellant's claimed January 24, 2001 employment incident and her medical condition.

On February 12, 2003 the Office received appellant's request for reconsideration. Appellant also submitted a January 31, 2003 report from Dr. Doyle who noted that appellant had a great deal of difficulty since her accident on January 24, 2001 when she sustained a muscle pull due, in part, to the repetitive nature of her job. She concluded that she felt that appellant's job was directly related to her continued pain in her right neck and shoulder area.

In a March 19, 2003 decision, the Office denied reconsideration finding the evidence to be cumulative in nature.

The Board finds that appellant has not met her burden of proof to establish that she sustained a work-related disability.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In the present case, appellant alleged a traumatic injury due to a January 24, 2001 incident at work. Appellant has not submitted sufficient rationalized medical evidence establishing that her shoulder and neck conditions were causally related to this incident. In his January 26, 2001 report, Dr. Rand, an orthopedist, stated that x-rays revealed severe spurring at C5-6 and that appellant was no better or worse than in 1998 when he diagnosed foraminal stenosis. He noted that appellant's x-rays showed degenerative arthritis sufficient to cause her symptoms and narrow areas in her thoracic spine with lipping. The spurs at C4-5 were present in 1998 but showed some healing. Dr. Rand opined that appellant has a well-defined pathology in her cervical spine that were probably the etiology of her symptoms. He noted appellant's belief that her pain was principally caused by her work, but he failed to provide a rationalized opinion on causal relationship. He did not explain how the January 24, 2001 incident caused or aggravated appellant's underlying degenerative disease or resulted in disability for work.

Drs. Conley and Doyle also generally attributed appellant's pain to her employment, but they did not clearly discuss how appellant's preexisting conditions were aggravated by the January 24, 2001 incident. In her July 31, 2001 report, Dr. Conley related appellant's symptoms to her work, but she did not address the January 24, 2001 incident as alleged. Therefore her report is insufficiently rationalized. Dr. Doyle's August 30, 2002 report attributed appellant's pain symptoms to her work, but failed to describe the alleged incident or explain how it caused or contributed to appellant's condition. In her January 23, 2002 report, Dr. Conley attributed,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

without explanation, appellant's condition to an August 9, 2000 work injury. These medical reports address causal relationship in terms of employment duties over time, implicating an occupational disease claim, rather than the alleged January 24, 2001 incident. The reports do not sufficiently explain the causal relationship of the incident in causing or contributing to appellant's preexisting foraminal stenosis, degenerative arthritis, multilevel cervical disc disease with spondylosis and lordotic reversal and nerve root impingement. The medical evidence is insufficient to establish the claim of traumatic injury. The Board further finds that the Office properly denied appellant's request for reconsideration of the merits of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>4</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without opening the case for a review of the merits.<sup>7</sup> While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>8</sup>

In the present case, appellant has not established that the Office abused its discretion in its March 19, 2003 decision by denying her request for reconsideration. Appellant has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office. In her January 2003 reconsideration request, appellant simply reargued the Office's determination that her medical evidence was insufficient. The January 31, 2003 report from Dr. Doyle is duplicative of her prior reports in that it contains an opinion that appellant's condition was work related without providing further explanation with reference to the January 24, 2001 incident. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>9</sup> Absent new and relevant evidence the Office properly denied a review of appellant's claim on the merits.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. 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).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>9</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The decisions by the Office of Workers' Compensation Programs dated March 19, 2003 and November 27, 2002 are hereby affirmed.

Dated, Washington, DC  
September 26, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member