



on February 11, 2003. Appellant stated that she told her supervisor on March 18, 2003 that she was pushing and pulling hampers and bulk mail containers and dumping sacks and that, when she bent down in a hamper, she could not come up into a completely upright position.

Appellant submitted a June 20, 2004 report from Dr. Steven Stewart, a Board-certified family practitioner and primary care attending physician, since February 3, 2004. He noted that she had worked as a postal clerk for 25 years, lifting heavy cartons of mail and putting repetitive stress on her lower spine and that appellant developed three consecutive lower back injuries where she developed lower back pain: on March 16, 2001 while lifting a heavy box, on December 20, 2001 while pushing a bulk mail cart and on February 11, 2003 while bending and lifting. Dr. Stewart described the findings on a March 29, 2003 computerized tomography (CT) scan and a March 25, 2004 magnetic resonance imaging (MRI) scan, both showing degenerative disc disease and disc bulges. He then stated:

“It is my opinion that [appellant] has chronic low back pain due to degenerative disc disease at multiple levels of the lumbar spine, as well as lumbar spinal stenosis, characterized as ‘moderate’ on the MRI scan as outlined above and bilateral neural foraminal stenosis due to herniated nucleus pulposus and osteoarthritis of her lumbar spine. All of these diseases of [her] spine are, without question, directly caused by the 25 years of repetitive stress on her spine as a result of her duties at the [employing establishment]; these repetitive stresses on her spine have culminated in the three acute lumbar spine strain injuries which led to [appellant’s] temporary disabilities, as outlined above and subsequently to permanent disability on March 19, 2003.”

On August 5, 2004 the Office advised appellant that it needed a detailed description of the employment activities to which she attributed her condition and a well-reasoned medical opinion clearly differentiating between her 25-year work history and the natural degenerative process that take place over a lifetime. The Office also noted that, under claim number 092031437, her claim for an injury on February 11, 2003 was denied and that it appeared appellant was filing a new claim without following her appeal rights under that claim. In an undated statement received by the Office on August 30, 2004, she noted that on March 18, 2003 she bent down into a hamper, felt pain in the left lower part of her back and told her supervisor, who assigned another employee to help her complete the dispatches. She submitted a claim for compensation from March 22 to July 8, 2003 and an August 20, 2004 report from Dr. Stewart. He described a February 11, 2003 employment injury when appellant bent over a large hamper and was unable to extend her spine due to the sudden onset of severe pain in her lower spine. Dr. Stewart stated that appellant suffered a herniated disc as she bent over the hamper on February 11, 2003 culminating in permanent disability.

By decision dated September 21, 2004, the Office found that appellant had not established that her back condition was related to her employment duties. The Office noted that her claim for a February 11, 2003 traumatic injury was adjudicated under another claim number and advised her that she must follow her appeal rights for the July 3, 2003 decision in that claim.

On November 11, 2004 appellant requested reconsideration and submitted an accident report regarding her February 11, 2003 injury and additional medical evidence. Included were a

March 18, 2003 report of her work tolerance limitations from Dr. Albino Gimenez, a general surgeon, reports dated March 24 and April 7, 2004 from Dr. Jose U. DeSousa, a Board-certified neurologist, diagnosing low back pain and lumbar radiculopathy and indicating that appellant was unable to work, results of the March 28, 2003 computerized tomography (CT) scan and July 7 and September 10, 2003 reports of her work limitations from Dr. James E. Beale, Jr., an orthopedic surgeon. In a September 12, 2003 narrative report, he attributed appellant's back pain to her December 2001 employment injury.

By decision dated November 23, 2004, the Office found that appellant had not submitted new and relevant evidence and that her request for reconsideration was not sufficient to warrant further review of the merits of her case.

### **LEGAL PRECEDENT -- ISSUE 1**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected 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>1</sup> Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

In a June 30, 2004 report, Dr. Stewart, a Board-certified family practitioner, stated that appellant's multi-level degenerative disc disease, spinal stenosis, bilateral neural foraminal stenosis due to a herniated nucleus pulposus and osteoarthritis of the lumbar spine were all directly caused by the 25-year history of repetitive stress on her spine as a result of her duties at the employing establishment. He, however, did not offer any rationale for his stated conclusion or for his opinion that the repetitive stresses on her spine culminated in three acute lumbar strain injuries. For this reason, Dr. Stewart's June 30, 2004 report is insufficient to meet appellant's burden of proof for her occupational disease claim that is the subject of this appeal.

In an August 20, 2004 report, Dr. Stewart stated that appellant sustained a herniated disc on February 11, 2003 when she bent over a hamper of mail. This report lends no additional support for her claim for compensation for an occupational disease, as it addresses a traumatic injury adjudicated under another claim number and not involved in the present appeal. The Board notes that appellant's statement received on August 30, 2004 addressed the incident involving back pain when bending into a hamper occurred on March 18, 2003 but the September 21, 2004 Office decision on appeal does not address whether appellant sustained a traumatic injury on March 18, 2003. It pertains to her claim for an occupational disease due to the duties of her job over a period of time and properly found that appellant had not shown a causal relation between her low back condition and those duties.

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<sup>1</sup> *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>2</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), 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 constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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>3</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>4</sup>

## ANALYSIS -- ISSUE 2

None of the medical reports appellant submitted with her request for reconsideration address the determinative issue of whether her low back condition is causally related to her employment duties. The reports prescribing work tolerance limitations and the report on the CT scan contain no opinion on causal relation and Dr. Beale's September 12, 2003 report attributes appellant's back pain to a December 2001 injury not relevant to the present claim. As she did not raise a new legal argument, show that the Office erroneously applied or interpreted a specific point of law; or constitute relevant new evidence; the Office properly refused to reopen appellant's claim for further review of the merits of her claim.

## CONCLUSION

The Board finds that appellant has not established that her low back condition is causally related to her employment duties. Her request for reconsideration was properly denied without further merit review.

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<sup>3</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>4</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 23 and September 21, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 18, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board