# United States Department of Labor
# Employees' Compensation Appeals Board

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| **REBECCA L. WOOD, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1275** |
| | ) | **Issued: September 6, 2005** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Omaha, NE, Employer** | ) | |

*Appearances:*
*Jack Nichols*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

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

### ***JURISDICTION***

On May 24, 2005 appellant filed a timely appeal from a November 16, 2004 merit decision of the Office of Workers' Compensation Programs which denied her claim that she sustained an injury on April 6, 2004, and a February 23, 2005 decision which denied her request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

### ***ISSUES***

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury on April 6, 2004; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

### ***FACTUAL HISTORY***

On April 9, 2004 appellant, then a 43-year-old nurse, filed a Form CA-1, traumatic injury claim, alleging that on April 6, 2004 she sustained an exacerbation of lumbar strain and

sacroiliac joint dysfunction while putting an egg crate mattress on a patient's bed. She stopped work on April 7, 2004 and returned to limited duty on April 9, 2004. The employing establishment authorized continuation of pay.

In support of her claim, appellant submitted medical reports from Dr. Consuelo T. Lorenzo, a Board-certified physiatrist. In a form report dated April 8, 2004, she diagnosed exacerbation of lumbar strain and advised that appellant was totally disabled on April 7 and 8, 2004 but could return to work on April 9, 2004. In a treatment note also dated April 8, 2004, Dr. Lorenzo noted findings of tenderness on examination with increased pain on forward flexion. Straight leg raising test was negative, and Gaenslen's maneuver produced increased low back pain. Her impression was exacerbation of chronic mechanical low back pain with no evidence of radiculopathy or myelopathy and she advised that appellant could return to light duty. Dr. Lorenzo submitted additional treatment notes in which she reiterated her diagnosis of chronic mechanical low back pain and that appellant should work light duty. In a treatment note dated June 24, 2004, Dr. Lorenzo opined that appellant's condition was due to a work-related injury dating back to 1999.

By letter dated September 14, 2004, the Office advised appellant that her claim had been considered an "uncontroverted $1,500.00 claim" that was being reopened for adjudication. She was informed of the evidence needed to support her claim and was given 30 days to respond.

By decision dated November 16, 2004, the Office denied the claim, finding that the April 6, 2004 incident occurred but that the medical evidence was insufficient to establish that she sustained an employment-related injury. On November 25, 2004 appellant requested reconsideration and submitted duplicates of medical reports previously of record. She also submitted a treatment note dated January 22, 2004. In a decision dated February 23, 2005, the Office denied appellant's reconsideration request, finding the evidence submitted to be repetitive and/or irrelevant.

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

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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. Regardless of whether

[1] 5 U.S.C. §§ 8101-8193.

the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] 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.[6] 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.[7]

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

It is not contested that the April 6, 2004 incident occurred. Appellant, however, failed to meet her burden of proof to establish that she sustained an injury caused by this incident. Her attending physiatrist, Dr. Lorenzo, provided treatment notes which diagnosed exacerbation of a lumbar strain. However, the physician merely diagnosed exacerbation of chronic mechanical low back pain, and subsequently advised that appellant's current back condition was due to a 1999 employment injury. The Board has long held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling*, *supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to the federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[8] A mere stated conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The Board finds that Dr. Lorenzo's reports do not constitute a reasoned medical opinion explaining how the April 6, 2004 incident caused or contributed to the diagnosed low back condition. Dr. Lorenzo did not report a history of lifting the egg crate mattress or provide any explanation of how appellant's work that day caused or aggravated her low back condition. Appellant has not established the critical element of causal relationship to establish that she sustained an injury on April 6, 2004.[9]

The Board however notes that the record contains elements of three claims appellant submitted to the Office -- Office file number 110171220, for an accepted back strain that occurred on March 9, 1999, Office file number 112027572, for an accepted cervical nerve root impingement at C5-6 with left-sided radiculopathy that occurred on December 19, 2004 and the instant claim, adjudicated by the Office under file number 112022617. On March 18, 2005 the Office consolidated these three cases.[10]

The Board further notes that, after appellant's March 1999 injury, she returned to regular duty on September 15, 1999. Dr. Lorenzo began treating her in July 1999 and in her January 22, 2004 treatment note, diagnosed exacerbation of chronic mechanical low back pain and advised that appellant should work one week of limited duty and then return to regular duty. Under the 1999 claim, in December 2004 a physical performance test was authorized, and in January 2005 physical therapy was authorized.

The Board therefore finds that the medical evidence of record does not establish that appellant sustained a new injury on April 6, 2004. The Office has properly doubled appellant's back claims and is adjudicating them based on the entire record.

## ***LEGAL PRECEDENT -- ISSUE 2***

Section 10.606(b)(2) of Office regulation provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the

[8] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[9] *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

[10] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal and is limited to a review of the evidence that was in the case record before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Steven J. Gundersen*, 53 ECAB 252 (2001).

Office.[11] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[13] Similarly, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[14]

## ***ANALYSIS -- ISSUE 2***

In her letter requesting reconsideration, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[15]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted medical evidence previously of record,[16] and a report dated January 22, 2004, which predates the claimed injury and is therefore not relevant to the issue of whether she sustained an injury on April 6, 2004. The Board has long held that 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.[17] Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.[18]

## ***CONCLUSION***

The Board finds that appellant did not establish that she sustained an injury on April 6, 2004. The Board also finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(2).

[12] 20 C.F.R. § 10.608(b).

[13] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[14] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[15] 20 C.F.R. § 10.606(b)(2).

[16] *Supra* note 1.

[17] *James A. Castagno*, 53 ECAB 782 (2002); *Eugene F. Butler*, 36 ECAB 393 (1984).

[18] *Mark H. Dever*, 53 ECAB 710 (2002).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 23, 2005 and November 16, 2004 be affirmed.

Issued: September 6, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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