U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKYE B. POPE and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

Docket No. 98-1404; Submitted on the Record;
Issued December 10, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury while in the performance of her duties on or about August 3, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's December 30, 1997 request for reconsideration.

On September 21, 1997 appellant, a personnel clerk, filed a claim asserting that she sustained a neck injury on August 3, 1996 while cleaning out old files, carrying them to the paper room, shredding them and occasionally removing shredder bags as they became full. She explained that her neck was "hurting terrible" the following day and that she could barely hold her head up.

To support her claim appellant submitted copies of treatment notes from August 21, 1996 through September 10, 1997. On October 31, 1997 the Office requested additional information, including a comprehensive medical report from her treating physician with a diagnosis and an opinion supported by medical rationale, on the cause of appellant's condition. The Office advised: "Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided."

Appellant submitted records from her physical therapist and a March 21, 1995 report from Dr. Alvaro Lievano, an orthopedic surgeon, who discussed appellant's bilateral wrist condition.

In a decision dated December 23, 1997, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury while in the performance of duty. The Office found that the evidence of record supported that appellant actually experienced the claimed employment incident but failed to establish that a medical condition had been diagnosed in connection with this.

Appellant requested reconsideration on December 30, 1997. She stated that the denial was not in agreement with "what has happened to me."

In a decision dated January 20, 1998, the Office denied appellant's request for reconsideration on the grounds that her letter neither raised substantive legal questions nor included new and relevant medical evidence.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury while in the performance of her duties on or about August 3, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[2]

The Office accepts that appellant experienced the employment incident alleged in her claim form, of cleaning out files on August 3, 1996. It therefore remains for appellant to establish that these employment factors caused an injury.

Causal relationship is a medical issue,[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

The record in this case contains no such medical opinion. Appellant has submitted records from her physical therapist, but the reports of physical therapists have no probative value on medical questions. A physical therapist is not a physician as defined by 5 U.S.C. § 8101(2) and therefore is not competent to render a medical opinion.[7] Appellant submitted a March 21,

[1] 5 U.S.C. §§ 8101-8193.

[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

1995 report from Dr. Lievano, an orthopedic surgeon, but this report does not address whether appellant sustained an injury while in the performance of duty on or about August 3, 1996. This evidence is irrelevant and of no probative value in establishing appellant's claim as it addressed a bilateral wrist condition. The Board has reviewed the treatment notes from August 21, 1996 through September 10, 1997 and finds that they fail to support that appellant sustained an employment injury on or about August 3, 1996.

Without a well-reasoned narrative medical opinion providing a diagnosis of appellant's neck condition and how the accepted employment factors caused or contributed to such condition, the evidence in this case is insufficient to meet appellant's burden of proof. The Board will affirm the Office's December 23, 1997 decision.

The Board also finds that the Office properly denied appellant's December 30, 1997 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[8] Section 10.138(b)(2) 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.[9]

Appellant's request for reconsideration simply asserted that the Office's denial was not in agreement with what had happened to her. It did not show that the Office erroneously applied or interpreted a point of law, it advanced no point of law or a fact not previously considered by the Office, and it was unsupported by relevant and pertinent evidence not previously considered by the Office. Because appellant's request failed to meet at least one of the three requirements for obtaining a merit review of her claim, the Office properly denied her request. The Board will affirm the Office's January 20, 1998 decision.

[8] 20 C.F.R. § 10.138(b)(1).

[9] *Id.* § 10.138(b)(2).

The January 20, 1998 and December 23, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 10, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member