U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IVAN O. BUSBY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

Docket No. 01-988; Submitted on the Record;
Issued December 18, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant developed a left hand and or wrist condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On July 29, 2000 appellant, then a 28-year-old mailhandler, filed a claim for compensation, alleging that his left-hand condition was employment related. He stated that he first became aware of his hand condition on July 10, 2000, while performing duties involving repetitive grasping, lifting and pushing.

Accompanying appellant's claim was a duty status report dated July 30, 2000; a position description; appellant's application for employment; and appellant's narrative statement. The duty status report indicated that appellant was to be on restricted duty from July 31 to September 1, 2000.[1] His narrative statement indicated that he began experiencing pain and discomfort in his left hand and wrist in July 2000. Appellant noted that his employment duties consisted of lifting and grabbing parcels in a repetitive manner.

In a letter dated August 10, 2000, the Office requested that appellant submit additional factual and medical evidence to support his claim and afforded him 30 days within which to do so.

In response to the Office's request appellant submitted a physician's assistant note dated August 28, 2000 and a narrative statement. The physician's assistant note indicated that appellant was being treated for carpal tunnel syndrome with a recommendation for physical therapy. Appellant's narrative statement indicated that he first noticed a change in the operation of his left hand in June 2000. He indicated that the condition had gotten progressively worse with time. Appellant also provided a detailed description of his employment duties.

[1] The signature of the physician was illegible.

On September 21, 2000 the Office issued a decision and denied appellants claim for compensation under the Federal Employees' Compensation Act.[2] The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

Subsequently, appellant submitted a nerve conduction test dated June 13, 2000; physical therapy notes dated August 18, 2000; a medical report from Dr. Paul Worrell, an osteopath, dated August 24, 2000; and a physician's assistant note dated November 15, 2000.

In a letter dated November 15, 2000, appellant requested a review of the written record of the Office decision dated September 21, 2000.

By decision dated December 8, 2000, the Office denied appellant's request for a review of the written record. The Office found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

The Board finds that appellant has not met his burden of proof in establishing that he developed a hand or wrist condition while in the performance of duty.

An employee seeking benefits under the Act 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 the 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.[3] 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.[4]

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) 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. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams,* 41 ECAB 345 (1989).

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.[5]

In this case, appellant performed repetitive duties of grasping, lifting and pushing mail in the course of his employment. However, he has not submitted sufficient medical evidence to establish that a condition has been diagnosed in connection with the employment factor and that any alleged hand or wrist injury is causally related to the employment factors or conditions. On August 10, 2000 the Office advised appellant of the type of medical evidence needed to establish his claim. He did not submit any medical report from an attending physician, addressing how specific employment factors may have caused or aggravated his hand condition.

The only medical evidence submitted in support of appellant's condition was a note from a physician's assistant. However, such reports are not considered medical evidence because a physician's assistant is not considered a physician under the Act.[6] Therefore, this report is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[7] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The Board further finds that the Office acted within its discretion in denying appellant's untimely request for a review of the written record.

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative, when a request is made within 30 days after issuance of an Office's final decision.[8] The Office's regulations expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral

[5] *Id.*

[6] *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term ''physician'' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); *see also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[7] *See Victor J. Woodhams, supra* note 4.

[8] 5 U.S.C. § 8124(b).

hearing."[9] The Office provided that such review of the written record is also subject to the same requirement that the request must be made within 30 days of the Office's final decision.[10]

The Office properly found that appellant's request for a review of the written record was untimely. His November 15, 2000 request for review of the written record was made more than 30 days after the Office's September 21, 2000 decision.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[11] The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[12]

The Board finds that the Office properly exercised its discretion by further denying appellant's request upon finding that he could have the matter further addressed by the Office through a reconsideration request along with the submission of new medical evidence.[13]

[9] *See* 20 C.F.R. §§ 10.615-10.616 (1999).

[10] *Id.*

[11] *Herbert Holley,* 33 ECAB 140 (1981).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record,* Chapter 2.1601 (October 1992).

[13] With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

The December 8 and September 21, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
December 18, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member