

FACTUAL HISTORY

On August 12, 2002 appellant, then a 45-year-old physician's assistant, filed an occupational disease claim alleging that he sustained pain in his right elbow area during writing as a result of his federal employment.

By letter dated October 1, 2002, the Office asked appellant to submit further information. No evidence was timely received and, by decision dated November 18, 2002, the Office denied his claim. The Office found that appellant had not established fact of injury as appellant had failed to submit a statement indicating the job-related activities that contributed to his condition and also failed to submit medical evidence that provided a diagnosis and rationalized opinion of the cause of his condition.

By letter dated November 30, 2002, appellant indicated that he writes all day at work, which causes a continuous irritation to his right arm and elbow. He indicated that he had no prior sprains or strains to his elbow and had never been diagnosed with arthritis, bursitis or any similar condition prior to this current problem. At the same time, appellant submitted an October 11, 2002 report wherein Dr. Robert H. Segal, a Board-certified psychiatrist and neurologist, indicated, "I believe that [appellant] has tend[i]nitis in the right elbow, which is related to his work (writing). His specific diagnosis is tend[i]nitis."

By letter dated December 15, 2002, mailed by certified mail on December 19, 2002, and received by the Office on December 26, 2002, appellant requested an oral hearing. By decision dated February 19, 2003, the Office denied appellant's request for an oral hearing as it was untimely. The Office also reviewed his request under its discretionary authority and further denied his request as it was determined that the issue in the case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which establishes that he sustained an injury as alleged.

By letter dated March 20, 2003, appellant requested reconsideration and enclosed a copy of the previously submitted report by Dr. Segal.

By decision dated June 20, 2003, the Office conducted a merit review but again denied appellant's claim. The Office noted that the November 13, 2002 decision was modified as the evidence of file now contained a medical diagnosis. However, the Office found that the medical evidence was insufficient to establish that the medical condition was causally related to the claimed work factors.

LEGAL PRECEDENT -- Issue 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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

¹ 5 U.S.C. §§ 8101-8193.

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.²

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) a factual statement identifying the 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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. 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 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of casual relationship between the condition and the employment factors. 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.⁵

ANALYSIS -- Issue 1

In the instant case, the only medical evidence submitted by appellant was Dr. Segal's October 11, 2002 report, wherein he indicated that appellant had tendinitis in his right elbow related to his writing work. This report does not constitute rationalized medical opinion evidence because it fails to describe appellant's work duties and does not explain how these duties resulted in appellant developing tendinitis. Accordingly, the medical evidence submitted did not establish that appellant's tendinitis was causally related to his employment.

² *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁴ *Id.*

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

LEGAL PRECEDENT -- Issue 2

A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought as determined by the postmark of the request.⁶ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁷ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁸

ANALYSIS -- Issue 2

The Office issued its initial decision on November 18, 2002. Although appellant's letter requesting a hearing was dated December 15, 2002, the letter was postmarked December 19, 2002. As the postmark determines the date of filing, and as the decision was issued on November 18, 2002, appellant's request for an oral hearing postmarked December 19, 2002 was not filed in a timely fashion. Accordingly, the Office properly determined that appellant's request for an oral hearing was untimely.

The Office proceeded to exercise its discretionary authority in considering appellant's hearing request. The function of the Board on appeal is to determine whether there has been an abuse of discretion. In its February 19, 2003 decision, the Office properly determined that appellant could equally well address the issue of fact of injury through the reconsideration process by the submission of additional evidence. The Board finds that the Office acted within its discretion in denying appellant's request for a hearing.

CONCLUSION

Under the circumstances as described above, the Board finds that appellant has not established that he sustained an injury causally related to his federal employment. The Board further finds that the Office properly denied appellant's request for an oral hearing.

⁶ 20 C.F.R. § 10.616.

⁷ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Rudolph Bermann*, 26 ECAB 354 (1975).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 20 and February 19, 2003 and November 18, 2002 are hereby affirmed.

Issued: January 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member