

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

P.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Roswell, NM, Employer**

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**Docket No. 06-1941
Issued: December 22, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2006 appellant filed a timely appeal from the December 23, 2005 Office of Workers' Compensation Programs' merit decision denying her claim for an employment-related injury and the February 8, 2006 nonmerit decision denying her request for further review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 21, 2005 appellant, then a 43-year-old mail carrier, filed an occupational disease claim alleging that she sustained headaches due to delivering mail on her route. She alleged that

the length of her route increased and that she had to lift and carry greater amounts of mail. Appellant retired from the employing establishment effective April 5, 2004.¹

Appellant submitted a June 10, 2005 report from Dr. Harvey J. Featherstone, an attending Board-certified internist, who noted that she had been under his care for severe chronic headache disorder. Dr. Featherstone stated:

“[Appellant’s] headaches began after she was involved in a motor vehicle accident in November 1993 and have persisted continuously since then. Her current headaches are certainly a direct result of this 1993 accident. Despite many different trails of treatments, [appellant’s] daily headache pattern continues. My opinion is that she is totally disabled by her post-traumatic headaches, as [appellant] would be unable to participate in any type of gainful employment because of the chronic level of discomfort from her chronic headaches. There is no end in sight for either her chronic headaches or her headache-related disability.²

By letter dated November 8, 2005, the Office requested that appellant submit additional factual and medical evidence.

In a November 19, 2005 statement, appellant indicated that she first noticed her headaches when she had an accident on November 24, 1993.³ She also submitted documents related to an application for disability retirement.

By decision dated December 23, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty.

In a form dated January 22, 2006, appellant requested reconsideration of the Office’s December 23, 2005 decision.

By decision dated February 8, 2006, the Office denied appellant’s request for further review of her claim on the merits.⁴

¹ On her claim form appellant indicated that she first became aware of her condition on November 24, 1993 and that she first became aware of its relationship to her employment on October 4, 2002.

² In a form report dated January 26, 1996, Dr. Featherstone noted that appellant reported that she was involved in a motor vehicle accident “with whiplash symptoms” in November 1993. He diagnosed post-traumatic headaches and stated that her condition was related to work and was a “direct result of [motor vehicle accident].”

³ Appellant did not describe the accident or indicate that it was employment related, nor did she clearly assert that her current complaints were related to the November 24, 1993 accident.

⁴ On appeal to the Board, appellant submitted additional evidence, including a number of medical reports, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of 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 specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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 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 a causal relationship 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 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.⁸

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained headaches due to delivering mail on a lengthy route, a task which required her to lift and carry large amounts of mail. The Board finds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty.

In a June 10, 2005 report, Dr. Featherstone, an attending Board-certified internist, stated that she had been under his care for severe chronic headache disorder. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

opinion that appellant's headache condition was caused by employment factors.⁹ Dr. Featherstone did not provide an opinion that appellant sustained headaches due to the employment factors implicated in the present case, *i.e.*, carrying and delivering large amounts of mail on her lengthy route. He indicated that appellant reported that her headaches began after she was involved in a motor vehicle accident in November 1993 and had persisted continuously since then. Dr. Featherstone posited that her current headaches were a direct result of this 1993 accident and stated that appellant was totally disabled from all work because of the chronic level of discomfort from her chronic headaches. Appellant mentioned a November 23, 1994 employment injury in one of her statements but did not address whether the accident was employment related. She did not explain how her condition was related to the accident or otherwise aggravated by her duties as a letter carrier. Moreover, Dr. Featherstone did not provide any description of the accident other than to identify it as a motor vehicle accident. He did not provide a rationalized medical opinion relating appellant's claimed condition to established employment factors.¹⁰

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹¹ the Office's regulation provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) submit a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.¹³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁴

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ The record also contains a January 26, 1996 form report in which Dr. Featherstone indicated that appellant's post-traumatic headaches were related to work and were a direct result of a November 24, 1993 motor vehicle accident. This report also lacks a rationalized medical opinion relating appellant's claimed condition to an established employment factor. Dr. Featherstone did not make any attempt to explain the medical process through which appellant would continue to have headaches for years after the November 24, 1993 accident.

¹¹ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(2).

¹³ 20 C.F.R. § 10.607(a).

¹⁴ 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

In a form dated January 22, 2006, appellant requested reconsideration of the Office's December 23, 2005 decision. However, she did not submit any evidence or argument in connection with her reconsideration request. Appellant has not established that the Office improperly denied her request for further review of the merits of its December 23, 2005 decision under section 8128(a) of the Act, because she did not advance a relevant legal argument not previously considered by the Office or submit evidence and argument which showed that the Office erroneously applied or interpreted a specific point of law or which constituted relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office properly refused to reopen appellant's claim for further review of the merits.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 8, 2006 and December 23, 2005 decisions are affirmed.

Issued: December 22, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board