United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 06-1146**
	)	**Issued: September 1, 2006**
U.S. POSTAL SERVICE, PORT HUENEME POST OFFICE, Port Hueneme, CA, Employer	)	

Appearances:
M.C., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 25, 2006 appellant filed a timely appeal from a January 18, 2006 decision of the Office of Workers' Compensation Programs denying her occupational disease claim and a March 23, 2006 decision denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that she sustained a neck, back or upper extremity condition with consequential depression in the performance of duty; and (2) whether the Office properly denied her request for an oral hearing. On appeal, appellant contended that the employing establishment wrongfully denied that her position required lifting parcels, prolonged standing, frequent twisting and frequent computer use.

FACTUAL HISTORY

On September 28, 2005 appellant, then a 57-year-old sales associate, filed an occupational disease claim (Form CA-2) claiming that she experienced chronic pain throughout

her back, neck, shoulders, hips, hands and wrists, with consequential depression. She attributed her conditon to "constant hand use, standing, bending and twisting" in the performance of duty on or before 2001 or 2002. Appellant first realized her condition was work related on August 11, 2005. She alleged continuous exposure to the identified work factors from 2001 until she stopped work on September 23, 2005. The record indicates that appellant returned to work for five hours a day in October 2005.

In a September 22, 2005 note, an individual affiliated with Buenaventura Medical Group, Inc. held appellant off work through October 10, 2005 as she was "totally incapacitated." The signature on this form is illegible.

In a November 15, 2005 note, Dr. Scot J. Richardson, an attending Board-certified neurologist, requested that appellant's work schedule be reduced to five hours a day due to "medical illness."

In a November 30, 2005 letter, the Office advised appellant of the deficiencies in the evidence of record and of the need to establish her claim. The Office noted that appellant had claimed an "unknown condition." The Office requested that appellant provide a detailed description of the employment activities which she believed contributed to her condition. It also requested a rationalized statement from her attending physician explaining how and why the identified work factors would cause the claimed condition.

In a December 7, 2005 letter, appellant stated that her duties required her to stand eight hours a day, "work with a computer all day," lift heavy parcels, reach and twist. She submitted additional evidence.[1]

In an October 21, 2005 note, appellant advised the employing establishment that her left arm, shoulder and thumb had begun to hurt but that she did "not wish to file an accident report or seek medical attention" as she was "currently under medical attention with [her] own doctor."

In a November 18, 2005 report, Dr. Richardson related appellant's six-year history of "all over body pain," with a paramedian disc protrusion, degenerative disc disease and mild right carpal tunnel syndrome. He reduced appellant's work schedule to five hours a day "[d]ue to a number of complaints." Dr. Richardson prescribed physical therapy.

In a January 12, 2006 letter, Kelleen Berthiaume, the postmaster, controverted appellant's claim. She contended that appellant was not on her feet for eight hours a day, did not work on the computer all day, nor did she lift heavy packages. Ms. Berthiaume explained that appellant used a touch-screen computer on an intermittent basis but did not perform continuous data entry. Appellant occasionally handled large parcels, carrying them 15 to 20 feet to a dispatch area. Ms. Berthiaume contended that appellant's duties did "not require her to twist because she pivot[e]d her feet and turn[ed]." She noted that appellant had two 10-minute breaks and a 1-hour lunch break during her 8-hour shift.

[1] Appellant also submitted a November and December 2005 physical therapy appointment calendar and a November 16, 2005 bone density scan report demonstrating osteopenia.

By decision dated January 18, 2006, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that the employing establishment rebutted appellant's account of her job duties and she did not establish the identified work factors as factual. The Office further found that appellant submitted insufficient medical evidence to establish that she sustained a particular condition or that work factors caused or contributed to that condition.

In a February 17, 2006 letter, postmarked on February 18, 2006, appellant requested an oral hearing before an Office hearing representative. Appellant asserted that the employing establishment was not truthful in describing her job duties and that Ms. Berthiaume refused to provide a position description. She submitted a February 7, 2006 report from Dr. Richardson diagnosing right carpal tunnel syndrome, lumbar disc disease and a cervical disc protrusion. Dr. Richardson noted that appellant's symptoms "improved considerably with a reduced work schedule." He opined that sitting, reaching, lifting, twisting and "computer work exacerbate[d] her symptoms." Dr. Richardson added that carpal tunnel syndrome was a "repetitive use injury, often related to work."

By decision dated March 23, 2006, the Office denied appellant's request for an oral hearing on the grounds that it was not timely filed. The Office found that appellant's request for an oral hearing was postmarked on February 18, 2006, more than 30 days after the issuance of the Office's January 18, 2006 decision. The Office further denied the hearing on the grounds that the issues involved could be addressed equally well by submitting new, relevant evidence on reconsideration establishing that she sustained an injury as alleged.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 filed within the applicable time limitation; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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

[2] Following the issuance of the Office's March 23, 2006 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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. 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 medial 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]

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained pain in her back, neck, shoulders, hips, hands and wrists due to standing and using a computer eight hours a day, lifting heavy parcels, reaching and twisting. However, the employing establishment contended that appellant did not stand for eight hours a day, used a touch-screen computer only intermittently and was not required to twist. The employing establishment confirmed that appellant occasionally lifted large parcels and carried them 15 to 20 feet. The Office denied appellant's claim, in part, as she did not establish the identified job duties as factual. The Board finds, however, that the employing establishment corroborated the factors of lifting and carrying large parcels and using a touch screen computer intermittently. To meet her burden of proof, appellant must establish a causal relationship between the accepted work factors and the claimed condition.

Dr. Richardson, an attending Board-certified neurologist, submitted November 15 and 18, 2005 reports relating appellant's history of "all over body pain," disc protrusions and degeneration and mild right carpal tunnel syndrome. He limited appellant to working five hours a day due to "multiple complaints" and an unidentified "medical illness." However, Dr. Richardson did not mention any work factors or diagnose a specific condition related to appellant's federal employment. The Board notes that pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation.[7] Although Dr. Richardson mentioned appellant's disc disease and carpal tunnel syndrome, he did not provide medical rationale explaining how her factors would cause or aggravate these conditions. In the absence of such rationale, the mere statement of these diagnoses is of diminished probative value in establishing causal relationship.[8]

[6] *Solomon Polen*, 51 ECAB 341 (2000).

[7] *See Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

[8] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003).

As the September 22, 2005 note finding appellant "totally incapacitated" lacks an identifiable signature, it is of no probative medical value.[9]

The Board notes that the Office advised appellant by letter dated November 30, 2005 of the evidence needed to establish her claim, including a rationalized statement from her physician supporting a causal relationship between the identified work factors and the claimed condition. However, appellant did not submit such evidence. Therefore, she has failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary … is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[10] Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[11] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[12]

ANALYSIS -- ISSUE 2

On February 18, 2006 appellant requested an oral hearing pursuant to the Office's January 18, 2006 decision denying her occupational disease claim. The request was not made within 30 days of the January 18, 2006 decision. Therefore, under section 8124(b)(1) of the Act, appellant was not entitled to a hearing as a matter of right.

The Office then exercised its discretion and determined that appellant's reconsideration request could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that she sustained an injury as alleged. The Board finds no evidence of record that the Office abused its discretion in denying appellant's hearing request. Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that appellant has not established that she sustained a neck, back or upper extremity condition with consequential depression in the performance of duty. The Board further finds that the Office properly denied appellant's request for a hearing.

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[9] *Thomas L. Agee*, 56 ECAB _____ (Docket No. 05-335, issued April 19, 1985); *Richard F. Williams*, 55 ECAB ___ (Docket No. 03-1176, issued February 23, 2004); *Merton J. Sills*, 39 ECAB 572 (1988).

[10] 5 U.S.C. § 8124(b)(1).

[11] 20 C.F.R. §§ 10.616, 10.617.

[12] *Claudio Vasquez*, 52 ECAB 496 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 23, 2006 is affirmed. The decision of the Office dated January 18, 2006 is affirmed as modified to reflect that appellant has established the work factors of lifting and carrying large parcels and intermittent use of a touch-screen computer as factual.

Issued: September 1, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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