United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
	)	**Docket No. 06-2132**
and	)	**Issued: February 13, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Appellant, 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 September 22, 2006 appellant filed a timely appeal from a May 30, 2006 Office of Workers' Compensation Programs' merit decision which denied her claim for an occupational disease. Appellant also appealed a decision dated July 11, 2006, which denied her request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues on appeal are: (1) whether appellant has met her burden of proof in establishing that she developed a bilateral wrist and hand condition while in the performance of duty; and (2) whether the Office properly denied appellant's request for review of the written record.

FACTUAL HISTORY

On January 18, 2006 appellant, then a 46-year-old mail processor, filed an occupational disease claim alleging that she developed a bilateral wrist and hand condition while performing her work duties. Appellant became aware of her condition on October 16, 2005. She did not stop work.

In a January 19, 2006 report, Dr. Patrice Marshall, a Board-certified internist, noted that appellant was a postal worker and presented with bilateral wrist pain that commenced on October 16, 2005. She reported repetitively lifting trays and pushing all purpose containers. Dr. Marshall noted an essentially normal examination, with normal wrist range of motion, normal hand grip bilaterally, normal sensory function and a negative Finkelstein, Phalen's and Tinel's signs bilaterally. She diagnosed wrist pain and recommended physical therapy and a wrist splint. In a duty status report dated January 19, 2006, Dr. Marshall returned appellant to work with restrictions of no repetitive lifting over five pounds and no pushing or pulling over five pounds.

On January 23, 2006 appellant was treated by Dr. Robin Armenia, an osteopath, who reported that she hurt both her hands while repetitively lifting trays and pushing all purpose containers. He noted findings on examination of mild tenderness of the left dorsal wrist, good range of motion and negative Finkelstein, Phalen's and Tinel's signs bilaterally. Dr. Armenia diagnosed bilateral wrist pain and advised that appellant could return to work on January 23, 2006 with a wrist splint and with restrictions of no repetitive lifting over 10 pounds. Appellant also submitted physical therapy notes from January 19 to 23, 2006.

In a letter dated February 17, 2006, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a February 27, 2006 nerve conduction study performed by Dr. Stephen S. Lexow, a Board-certified neurologist. It revealed no abnormalities. Dr. Lexow noted that appellant's symptoms were suggestive of bilateral carpal tunnel syndrome, but were atypical for carpal tunnel syndrome. The right and left median and ulnar sensory distal latencies were near the upper limits of normal and not diagnostic of carpal tunnel syndrome. He opined that appellant may have overuse syndrome related to work, specifically mild bilateral carpal tunnel syndrome and/or tendinitis of both wrists, but he could not rule out other causes of numbness in her hands. In a March 23, 2006 duty status report, Dr. Janet L. Kendrick-Bivens, a Board-certified family practitioner, diagnosed bilateral wrist tenderness. She advised that appellant could return to work on February 13, 2006 subject to restrictions on lifting and carrying of five pounds, no pulling or pushing, no repetitive grasping or bending at the wrist.

In a decision dated May 30, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by her employment duties.

By letter dated and postmarked June 30, 2006, appellant requested a review of the written record. She submitted physical therapy notes from April 17 to June 6, 2006.

By decision dated July 11, 2006, 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 her 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.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation 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. 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.[1]

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. 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.[2]

ANALYSIS -- ISSUE 1

It is not disputed that appellant's duties as a mail processor included lifting and pushing and performing some repetitive activities using her arms. However, she has not submitted sufficient medical evidence to support a bilateral wrist condition in connection with her employment duties or that any alleged bilateral hand and wrist condition is causally related to the

[1] *Gary J. Watling*, 52 ECAB 357 (2001).

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

accepted employment factors. On February 17, 2006 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

In January 19, 2006 reports, Dr. Marshall noted that appellant was a postal worker and presented with bilateral wrist pain. Appellant reported that she hurt both her hands while repetitively lifting trays and pushing all purpose containers. Dr. Marshall noted an essentially normal physical examination and negative tests. Dr. Marshall returned appellant to modified duty. However, she did not address the issue of causal relationship. She simply listed the history of injury as reported by appellant without providing her own opinion regarding whether appellant's condition was work related.[3] She failed to provide a rationalized opinion regarding the causal relationship between appellant's claimed condition and the factors of employment believed to have caused or contributed to such condition.[4]

Appellant also submitted a report from Dr. Armenia dated January 23, 2006, who noted that appellant reported that she hurt both her hands while repetitively lifting trays and pushing all purpose containers and diagnosed bilateral wrist pain. Dr. Armenia did not address the issue of causal relationship but merely repeated the history of injury as reported by appellant.[5] He did not explain the causal relationship of the diagnosed wrist pain to the factors of employment believed to have caused or contributed to such condition.[6]

Appellant submitted a nerve conduction study performed by Dr. Lexow dated February 27, 2006, which revealed no abnormalities. Dr. Lexow noted that appellant's symptoms were suggestive of bilateral carpal tunnel syndrome, but were atypical for carpal tunnel syndrome. He did not provide a definite diagnosis for appellant's bilateral complaints.[7] Dr. Lexow opined that appellant "may have" overuse syndrome related to work, a mild bilateral carpal tunnel syndrome or tendinitis of both wrists, but he could not rule out other causes for the numbness in her hands. He couched his opinion in speculative terms with regard to the diagnosis and possible overuse. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[8] This report is insufficient to establish appellant's claims.

[3] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[4] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[5] *See Frank Luis Rembisz, supra* note 3.

[6] *See Jimmie H. Duckett, supra* note 4.

[7] *Frank Luis Rembisz, supra* note 3.

[8] *Id.*

Also submitted were physical therapy notes from January 19 to 23, 2006. The Board has held that physical therapy notes are not considered medical evidence as a physical therapist is not a physician under the Act.[9] Therefore, these reports are of no probative value as medical evidence.

The remainder of the medical evidence failed to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions of bilateral wrist and hand pain. For this reason, this evidence is not sufficient 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 her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[10] 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.

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 her claim before a representative of the Secretary."[11] Section 10.617 and 10.618 of the federal regulations implementing this section of the Act provides 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.[12] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[13] The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

> "If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), [Hearings and Review] will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons."[14]

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[9] *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. *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).

[10] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. §§ 10.616, 10.617.

[13] *Delmont L. Thompson,* 51 ECAB 155 (1999); *Eddie Franklin,* 51 ECAB 223 (1999).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record,* Chapter 2.1601.4 (b)(3) (October 1992).

ANALYSIS -- ISSUE 2

Appellant requested a review of the written record on June 30, 2006. Section 10.616 of the federal regulations provides: "The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."[15] As the date of the request was more than 30 days after issuance of the May 30, 2006 Office decision, appellant's request for a review of the written record was untimely. The Office was correct in finding in its July 11, 2006 decision that appellant was not entitled to a review of the written record as a matter of right because her request was not made within 30 days of the Office's May 30, 2006 decision. Although appellant indicated that there was a delay in receiving the decision, the record reflects that the compensation award with accompanying appeal rights was properly mailed to appellant's address of record on May 30, 2006 and, thus, under the mailbox rule she is presumed to have received it.[16] Appellant's request for a hearing review of the written record was dated and postmarked June 30, 2006, 31 days after May 30, 2006 and thus it is outside the 30-day statutory limitation. Since appellant did not request a review of the written record within 30 days of the Office's May 30, 2006 decision, she was not entitled to a review of the written record under section 8124 as a matter of right.

While the Office also has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right, the Office, in its July 11, 2006 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for a review of the written record on the basis that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[17] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record, which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a review of the written record under section 8124 of the Act.

CONCLUSION

The Board, therefore, finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet her burden of proof. The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely.

[15] 20 C.F.R. § 10.616.

[16] In the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received by that individual. Under the mailbox rule, evidence of a properly addressed letter together with evidence of proper mailing may be used to establish receipt. *Joseph R. Giallanza*, 55 ECAB 186 (2003).

[17] *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and May 30, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 13, 2007
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