United States Department of Labor
Employees' Compensation Appeals Board

A.Y., Appellant	)	
and	)	**Docket No. 06-2172**
	)	**Issued: February 13, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Goshen, IN, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2006 appellant filed a timely appeal of the July 19 and September 8, 2006 decisions of the Office of Workers' Compensation Programs.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained injuries to her neck, back and right shoulder in the performance of duty on January 3, 2005; and (2) whether the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 30, 2006 appellant, a 35-year-old rural carrier, filed a traumatic injury claim alleging that she injured her neck, back and right shoulder as a result of a January 3, 2005

[1] The Office denied the claim on the merits in the July 19, 2006 decision and subsequently denied reconsideration on September 8, 2006.

employment-related motor vehicle accident. She indicated that the injury occurred when her mail truck hydroplaned on a wet road and eventually came to rest in an adjacent field. Appellant did not immediately stop work following the January 3, 2005 incident. In fact, she continued to work without interruption for approximately 13 months afterwards. Appellant first received medical treatment for her claimed right shoulder condition on February 17, 2006. At the time, her family physician referred her for an orthopedic evaluation and excused her from work pending further evaluation. On March 3, 2006 Dr. Thomas V. Graber, a Board-certified orthopedic surgeon, diagnosed right shoulder tendinitis.

On or about March 10, 2006 appellant reportedly advised the employing establishment that she was under medical care for an injury she sustained at home while moving a tanning bed. When she later filed the instant claim, the employing establishment contested its validity based on her prior representation. The employing establishment also noted that more than a year had elapsed before appellant sought medical treatment for the alleged January 3, 2005 injury.

In a June 24, 2006 statement, appellant explained that she purchased a tanning bed on February 11, 2006, but she did not help move the tanning bed any distance. Her husband and two other men reportedly moved the tanning bed to its location. Appellant's only involvement with the installation of the tanning bed was assisting in assembling the top portion of the apparatus.[2] She stated that she did not experience any type of injury or pain from the tanning bed. Appellant also indicated that she did not sustain any other injuries between the time of the January 3, 2005 incident and February 17, 2006, when she first went to her family physician, Dr. John A. Hawkins, a Board-certified internist, because of pain in her right arm.

Dr. Norman D. Ross, a chiropractor, treated appellant on May 17 and 19, 2006. In a May 31, 2006 report, he indicated that x-ray findings and motion palpation revealed subluxations at C-5, D-5, D-6 and D-7.

Additional medical evidence included treatment records from Dr. Graber covering the period March 3 to June 19, 2006. Dr. Graber submitted a June 7, 2006 attending physician's report (Form CA-20) in which he diagnosed pain in shoulder joint, pain upper arm joint, degeneration of intervertebral disc and tendinitis shoulder. His findings included significant protruding disc at C5-6 level and partial thickness rotator cuff tear.[3] Dr. Graber listed appellant's date of injury as approximately February 2006. Her noted history of injury was "pain -- in [February] 2006 in shoulder -- tried lifting tanning bed -- got worse." Dr. Graber did not respond to the question of whether appellant's condition was caused or aggravated by an employment activity.

[2] Appellant stated that she guided the top of the tanning bed into the bottom of the hinge. In an undated statement, John Fein indicated that he was one of three men who moved appellant's tanning bed on February 11, 2006. Mr. Fein stated that appellant did not move the tanning bed any distance at all; she only guided the top once it was already placed. He also indicated that appellant experienced problems with her arm prior to purchasing the tanning bed.

[3] Dr. Graber referenced a March 16, 2006 magnetic resonance imaging (MRI) scan; however, this MRI scan was not made a part of the record.

Dr. Hawkins also submitted a Form CA-20. In his June 9, 2006 report, he diagnosed tendinitis of the right shoulder. He noted a February 12, 2006 date of injury when appellant reportedly "hurt [her] right shoulder after lifting a tanning table." On the form report, Dr. Hawkins checked the "no" box indicating that he did not believe appellant's condition was caused or aggravated by an employment activity.

Appellant also received treatment from Dr. Joseph G. Glazier, a pain management specialist, who initially examined appellant on May 15, 2006 and diagnosed cervical disc degeneration and cervical radiculopathy. Dr. Glazier subsequently administered a series of steroid injections, cervical epidural blocks and thoracic facet blocks. In a June 23, 2006 report, he diagnosed degenerative cervical disc disease, radiculopathy and cervical-thoracic facet syndrome. Dr. Glazier noted that appellant had been involved in a January 3, 2005 motor vehicle accident and that her current condition was aggravated and/or brought on by the accident.

By decision dated July 19, 2006, the Office denied appellant's claim. It found that the evidence did not establish that the claimed medical condition resulted from the January 3, 2005 work-related event.

Appellant filed a request for reconsideration on August 22, 2006. Additional evidence received after the July 19, 2006 denial included hospital admission records regarding a June 26, 2006 thoracic facet block and steroid injection administered by Dr. Glazier. Appellant also submitted a July 26, 2006 report from her chiropractor, Dr. Ross, who indicated that he first treated her on May 17, 2006 for complaints of upper back, right shoulder and neck pains. Dr. Ross also noted that appellant advised him that she had been off work since February 2006 due to an auto accident. He reiterated his prior diagnosis of subluxations at C5, D5, 6 and 7. Lastly, the Office received a July 28, 2006 report from Dr. Graber who noted that he was presently treating appellant for cervical radiculopathy and when last seen on July 19, 2006, her maximum area of discomfort was the anterior aspect of the right shoulder. Dr. Graber noted that he advised appellant to remain off work and continue with physical therapy and pain management under Dr. Glazier's supervision.

The Office denied appellant's request for reconsideration by decision dated September 8, 2006.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as

[4] 5 U.S.C. § 8101 *et seq.*

alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant was involved in an employment-related motor vehicle accident on January 3, 2005. However, the medical evidence does not establish that her claimed neck, back and right shoulder condition is the result of the January 3, 2005 employment incident. Dr. Glazier was the only physician of record to attribute appellant's cervicothoracic condition to the January 3, 2005 incident. In his June 23, 2006 report, Dr. Glazier indicated that the January 3, 2005 motor vehicle accident aggravated and/or brought on the diagnosed degenerative cervical disc disease, radiculopathy and cervical-thoracic facet syndrome. His report, however, does not describe the specific mechanism of injury. Dr. Glazier also did not mention what affect, if any, the February 2006 tanning bed incident may have had on appellant's current condition. Both Dr. Graber and Dr. Hawkins referenced the February 2006 incident in their respective reports, and Dr. Hawkins, the first to examine appellant, specifically noted that she hurt her right shoulder after lifting a tanning bed. Dr. Glazier has not provided sufficient explanation for his finding that appellant's current condition is the result of the January 3, 2005 employment incident. Because he failed to explain the nature of the relationship between the diagnosed condition and the January 3, 2005 employment incident, Dr. Glazier's opinion cannot be considered rationalized.[9] Accordingly, the Office properly denied appellant's traumatic injury claim.

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[5] 20 C.F.R. § 10.5(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

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

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *Victor J. Woodhams*, *supra* note 6.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.[10] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[11] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

Appellant's August 22, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).[13]

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence with her August 22, 2006 request for reconsideration. The relevant issue on reconsideration is whether appellant's diagnosed condition is causally related to the January 3, 2005 employment incident. Therefore, any evidence submitted on reconsideration must not only be new, but also relevant and pertinent to the issue of causal relationship. However, none of the evidence the Office received following the issuance of the July 19, 2006 decision specifically addressed the issue of causal relationship. The records for the June 26, 2006 thoracic facet block Dr. Glazier administered do not shed any light on the issue of causal relationship. Similarly, Dr. Graber's July 28, 2006 report does not address causal relationship, but merely notes that appellant continued to receive treatment for cervical radiculopathy. Dr. Ross' July 26, 2006 report is also not pertinent to the issue of causal relationship. Other than noting that appellant had advised him that she had been off work since February 2006 due to an automobile accident, appellant's chiropractor did not offer an opinion regarding the cause of her previously diagnosed subluxations at C5, D5, 6 and 7. As there was no relevant and pertinent new evidence for the Office to consider, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).[14] Because appellant was not entitled to a review of the merits of her claim pursuant to any of the

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(2).

[12] 20 C.F.R. § 10.608(b).

[13] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[14] 20 C.F.R. § 10.606(b)(2)(iii).

three requirements under section 10.606(b)(2), the Office properly denied the August 22, 2006 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that her claimed neck, back and right shoulder condition was causally related to the January 3, 2005 employment incident. The Board also finds that the Office properly denied appellant's request for a review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the September 8 and July 19, 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

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