

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Hartford, CT, Employer**

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**Docket No. 07-728
Issued: July 9, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2007 appellant filed a timely appeal from a December 1, 2006 nonmerit decision of the Office of Workers' Compensation Programs that denied her request for reconsideration and an October 17, 2006 decision that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty; and (2) whether the Office properly denied her reconsideration request without conducting a merit review.

FACTUAL HISTORY

On August 29, 2006 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that she sustained an injury to her right shoulder when she "turned wrong," while carrying a heavy bag of mail on August 1, 2006. She did not stop work.

By letter dated September 15, 2006, the Office requested additional information concerning appellant's claim. In a September 21, 2006 response, appellant explained that on the date of her claimed injury she was carrying a heavy bag of mail while walking her route when she "turned wrong walking down some stairs and ... felt a pull" in her right shoulder.

Appellant submitted an August 3, 2006 x-ray request from Vernon Walk-In Medical Care Center and a treatment note from a Dr. Goldberg¹ indicating that she was experiencing shoulder pain. In a space provided for a diagnosis, Dr. Goldberg: "R shoulder." Portions of the treatment note are illegible.

By decision dated October 17, 2006, the Office denied appellant's traumatic injury claim. The Office determined that the August 1, 2006 incident occurred as alleged but that the medical evidence was insufficient to establish an injury. Appellant requested reconsideration on November 11, 2006.

By decision dated December 1, 2006, the Office denied appellant's reconsideration request without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ As part of this burden, the

¹ Dr. Goldberg's full name and specialty are not discernable from the record.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury on August 1, 2006. The record reflects that the claimed employment incident, carrying a mail bag, occurred as alleged. However, the medical evidence does not provide a clear diagnosis and does not provide a physician's opinion that carrying a mail bag that day caused or contributed to a diagnosed condition.

Appellant submitted an August 3, 2006 x-ray request from a medical care center and a treatment note, from a Dr. Goldberg, both of which are only partially legible. These reports are insufficient to establish the claim because they do not address how or why a diagnosed medical condition was caused or aggravated by the carrying of a mail bag on August 1, 2006. The reports lack a firm diagnosis of injury to the right shoulder and provide no history of the August 1, 2006 incident. As noted, part of appellant's burden of proof includes the submission of rationalized medical evidence showing a causal relationship between a diagnosed condition and her employment activity on the date in question. Accordingly, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained a traumatic injury in the performance of duty, as it does not address causal relationship between the carrying of a mail bag on August 1, 2006 and a diagnosed condition.⁸

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in using this discretion.⁹ The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

⁷ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁸ The Board notes that appellant submitted an additional medical report on appeal. However, the Board cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

⁹ 20 C.F.R. § 10.606(b)(2).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”¹⁰

Section 10.608(b) provides that when an application for review of the merits of a claim 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.¹¹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant’s application for reconsideration and any evidence submitted in support thereof.¹²

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant’s reconsideration request. As noted, section 10.606(b)(2), requires that a request for reconsideration either assert that the Office misapplied or misinterpreted a point of fact or law, advance a new legal argument or include new and relevant evidence.¹³ Appellant’s request for reconsideration did not meet any of the above listed criteria. She did not assert that the Office misapplied or misinterpreted a point or fact of law, nor did she advance a new legal argument. The record does not reflect that appellant submitted any new medical or factual evidence with her request for reconsideration. Accordingly, the Office properly denied her request for reconsideration without conducting a merit review as she failed to meet any of the above listed criteria.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty and that the Office properly denied appellant’s request for reconsideration without conducting a merit review.

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.608(b).

¹² *Annette Louise*, 54 ECAB 783 (2003).

¹³ *See supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the December 1 and October 17, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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