United States Department of Labor
Employees' Compensation Appeals Board

P.P., Appellant	)	
and	)	**Docket No. 10-87**
	)	**Issued: September 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 13, 2009 appellant filed a timely appeal from the August 31, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for an oral hearing and the July 13, 2009 merit decision that denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's case.

ISSUES

The issues are: (1) whether appellant established she sustained an injury in the performance of duty causally related to her employment; and (2) whether the Office properly denied her request for an oral hearing as untimely pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On May 8, 2009 appellant, a 43-year-old clerk, filed an occupational disease claim (Form CA-2) for bilateral wrist, elbow and neck pain. She first became aware of her condition on April 10, 2006 and that her condition was caused by her employment on January 8, 2007. On May 30, 2009 she related that her condition resulted from performing repetitive finger motions,

lifting and pulling containers of mail and pulling automated postal center (APC) machines. Appellant noted that in 2002 an APC machine had fallen on her hand at work and had broken it, which then caused carpel tunnel syndrome of the left hand. She underwent a carpal tunnel release in 2003.

On April 16, 2006 Dr. R. Frank Morrison, a Board-certified physiatrist, reported findings on examination and diagnosed resolution of her left-sided carpal tunnel syndrome, with current left-sided cubital tunnel syndrome and cervical radiculopathy at the C7 level, on the left side. In his history, Dr. Morrison related appellant's condition to a December 18, 2002 crush injury she sustained while performing her employment duties.

In an unsigned January 8, 2007 note, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, diagnosed left wrist carpal and cubital tunnel syndrome, cervical radiculopathy at the C7 level, and a nondisplaced fracture of the distal phalanx of her left middle finger. On May 27, 2009 he reviewed appellant's history of injury and diagnosed cervical strain with left upper extremity radiculopathy. On June 1, 2009 Dr. Shade diagnosed cervical strain with left upper extremity radiculopathy. In subsequent notes, he reiterated the diagnoses.

On June 7, 2009 Dr. David Leifer, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed mild multilevel disc bulges.

By decision dated July 13, 2009, the Office denied the claim finding the evidence of record did not establish the claimed employment factors caused a medically-diagnosed condition.

On August 7, 2009 Dr. Stephen Becker, a Board-certified physiatrist, diagnosed cervical radiculopathy at the C6-7 level. On August 17, 2009 Dr. Shade related that appellant "has not been treated for cervical disc in the past."

On August 19, 2009 appellant requested an oral hearing. She submitted a description of her symptoms and history of injury. Appellant explained that her current claim was not for the same injury she sustained in 2002 but that her current claim arose from recently diagnosed cervical conditions.

By decision dated August 31, 2009, the Office denied a hearing finding that appellant's hearing was untimely filed.[1]

[1] Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[8]

ANALYSIS -- ISSUE 1

Appellant identified employment tasks such as repetitive finger motions, lifting and pulling containers of mail and pulling APC machines as employment factors she deemed

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

responsible for her condition. The Board finds that the record supports that she performed such duties in her federal employment. Appellant's burden is to establish that her work caused her claimed bilateral wrist condition. This is a medical issue that can only be proven by probative medical opinion evidence. The medical evidence of record lacks sufficient opinion addressing the causal relationship between appellant's condition and the identified employment factors. Accordingly, the Board finds appellant has not established she sustained an injury in the performance of duty.

The reports of Drs. Becker, Leifer, Morrison and Shade are of diminished probative value on the issue of causal relationship because they did not provide any opinion explaining how the identified employment factors caused the diagnosed conditions.[9] The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of the stated conclusions.[10] While each physician provided a diagnosis of appellant's conditions, they offered no opinion explaining how her diagnosed cervical or upper extremity conditions were caused or aggravated by the factors of employment appellant alleged.

Dr. Morrison attributed appellant's condition to a December 18, 2002 "crush injury" she sustained while performing her employment duties; however, this was not a factor of employment cited by appellant in the current claim.[11] Furthermore, Dr. Morrison did not describe the crush injury, or explain how this incident produced appellant's current conditions. Thus, this evidence does not establish a causal relationship between the accepted employment factors and appellant's claimed condition.

An award of compensation may not be based on surmise, conjecture or speculation.[12] Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[13] The fact that a condition manifests itself or worsens during a period of employment[14] or that work activities produce symptoms revelatory of an underlying condition[15] does not raise an inference of causal relationship between a claimed condition and employment factors.

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[9] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[11] To the extent appellant attributes her condition in 2009 to the prior 2002 injury, this decision does not preclude her from presenting evidence to the Office under the 2002 claim number.

[12] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[13] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[14] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[15] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

The medical record contains no reasoned discussion of causal relationships, one that soundly explains how the accepted work duties caused or aggravated a diagnosed medical condition. The Board finds appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act,[16] concerning a claimant's entitlement to a hearing before an Office hearing representative, states: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection(a) of this section 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.

Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[17] When the Office revised its regulations effective January 4, 1999, the new regulations provided that a hearing was a review of an adverse decision by a hearing representative and that a claimant could choose between two formats: an oral hearing or a review of the written record.[18] These regulations also provide that the request for either type of hearing 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.[19]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, including when the request is made after the 30-day period for requesting a hearing and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[20] In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[21]

ANALYSIS -- ISSUE 2

On July 13, 2009 the Office denied appellant's claim. Appellant's hearing request was post-marked August 19, 2009, more than 30-days after the Office issued its decision. Therefore, the Office properly found that appellant was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion and determined that appellant's request for an oral hearing could be equally well addressed by requesting reconsideration and submitting additional evidence. The Board has held that the only limitation on the Office's discretionary

[16] 5 U.S.C. § 8124(b)(1).

[17] *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

[18] 20 C.F.R. § 10.615.

[19] *Id.* at § 10.616. *See Leona B. Jacobs*, 55 ECAB 753 (2004).

[20] *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

[21] *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, 34 ECAB 216 (1982).

authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and probable deduction from established facts.[22] There is no evidence of record to establish that the Office abused its discretion in denying appellant's request. The Board finds that the Office's denial of her request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds appellant has not established that she sustained an occupational condition in the performance of duty. The Board also finds that the Office properly denied her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the August 31 and July 13, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 22, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[22] *See André Thyratron*, 54 ECAB 257 (2002).