United States Department of Labor Employees' Compensation Appeals Board

TONI L. LAMBERT, Appellant	-))	
and)	Docket No. 04-1082
U.S. POSTAL SERVICE, POST OFFICE, Sequim, WA, Employer)	Issued: December 2, 2004
Appearances: Toni L. Lambert, pro se	_	Case Submitted on the Record

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member WILLIE T.C. THOMAS, Alternate Member MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 15, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 8, 2004 finding that she did not sustain an occupational injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a medical condition in the performance of duty, causally related to factors of her federal employment.

FACTUAL HISTORY

On November 12, 2003 appellant, then a 49-year-old rural letter carrier, filed an occupational disease claim alleging that she sustained low back pain leading to the loss of her ability to walk upright, pain when sitting and slight limping as a result of lifting 50- to 60-pound mail trays. She was initially aware of her condition on October 10, 2003 and first realized it was

caused by her employment on November 8, 2003. Appellant notified her supervisor on November 12, 2003 but did not stop work.

In support of her claim, appellant submitted a November 12, 2003 report from Dr. Donald C. Manuele, her treating osteopath, who placed her on light duty with a lifting restriction of no more than 30 pounds.

By letter dated November 26, 2003, the Office advised appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a decision dated January 8, 2004, the Office denied appellant's claim on the grounds that she failed to submit sufficient medical evidence to establish that she sustained a medical condition caused by factors of her employment.

LEGAL PRECEDENT

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.¹

ANALYSIS

The only medical evidence before the Office at the time it issued its January 8, 2004 decision was the November 12, 2003 report from Dr. Manuele, a treating osteopath, who placed appellant on light duty with a 30-pound lifting restriction. However, Dr. Manuele did not provide a diagnosis nor did he relate any medical condition to her federal employment activities. As noted above, part of appellant's burden of proof is the submission of reasoned medical evidence addressing whether employment factors caused or aggravated the claimed condition. Although the Office notified appellant regarding the kind of evidence she needed to support her claim, she failed to submit sufficient medical evidence to establish that she sustained a medical condition caused by factors of her federal employment. Without such evidence, appellant has not met her burden of proof.²

¹ Solomon Polen, 51 ECAB 341 (2000).

² The Board notes that this case record contains evidence submitted to the Office subsequent to its January 8, 2004 decision. Further, on appeal, appellant submitted new evidence to the Board. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit new evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a medical condition caused by factors of her federal employment.

<u>ORDER</u>

IT IS HEREBY ORDERED THAT the January 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2004 Washington, DC

> David S. Gerson Alternate Member

Willie T.C. Thomas Alternate Member

Michael E. Groom Alternate Member