United States Department of Labor
Employees' Compensation Appeals Board

HELENA B. YOUNG-PERRY, Appellant	)	
and	)	**Docket No. 04-781**
	)	**Issued: June 14, 2004**
DEPARTMENT OF HEALTH & HUMAN SERVICES, HEALTH RESOURCES & SERVICES ADMINISTRATION, Rockville, MD, Employer	)	

Appearances:
Helena B. Young-Perry, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 2, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated October 10, 2003 and January 15, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the October 10, 2003 merit decision which denied appellant's claim for an injury in the performance of duty and over the January 15, 2004 decision denying appellant's request for a hearing.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on August 9, 2002; and (2) whether the Office properly denied appellant's request for a hearing.

FACTUAL HISTORY

On March 17, 2003 appellant, then a 44-year-old secretary, filed a claim alleging that on August 9, 2002 she sustained an injury while assembling, typing, lifting, cutting and pasting

labels for several briefing books.[1] Appellant stopped work on August 12, 2002 and returned on September 23, 2002. The Office determined in an August 22, 2003 memorandum that a new traumatic injury was being alleged and recommended treating the claim as a new traumatic injury.

By letter dated September 10, 2003, the Office advised appellant that additional factual information was needed and that no medical evidence in support of the claim had been received. Appellant was requested to describe in detail how the injury occurred and to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office allotted appellant 30 days within which to submit the requested information.

Appellant submitted a September 25, 2003 statement from Ivana R. Williams, a senior program management officer, who indicated that appellant was assisting with the briefing materials on August 9, 2002 when she complained of the onset of pain in her right shoulder and upper arm. In a September 25, 2003 statement, Angela Bethea-Spearman, a coworker, indicated that appellant was copying large briefing books and complained of pain in her shoulder and back shoulder blade. In an undated statement, appellant described the immediate effects of her injury, which included pain to her right shoulder and explained that she had similar symptoms prior to the injury in her right shoulder and arm.

By decision dated October 10, 2003, the Office denied appellant's claim, finding that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty. The Office noted that appellant failed to submit probative medical evidence.

Appellant subsequently requested a hearing. The postmark indicated that the request was mailed on November 13, 2003. She submitted a November 7, 2003 report from Dr. Jeffrey A. Abend, a Board-certified orthopedic surgeon. In an August 26, 2002 statement, Sandra Ceballos, a career counselor, indicated that appellant was overworked on a daily basis and had an ongoing medical condition with her right shoulder.

By decision dated January 15, 2004, the Office found that appellant was not entitled to a hearing because her request was not made within 30 days of the October 10, 2003 decision. The Office exercised its discretion and determined that it would not grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence regarding her injury at work on August 9, 2002.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the

[1] Appellant claimed that she sustained a recurrence of disability due to a December 23, 1997 employment injury.

[2] 5 U.S.C. §§ 8101-8193.

individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an 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."[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]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established.[5] Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident.[6] The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7] An employee may establish that an injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.[8]

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 the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[9] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[10] 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.[11] 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 claimant's specific employment factors.[12]

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[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Neal C. Evins*, 48 ECAB 252 (1996).

[6] *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

[7] 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee).

[8] *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

[9] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[10] *Id*.

[11] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *Id.*

ANALYSIS -- ISSUE 1

In the present case, appellant submitted supporting documentation that she was engaged in assisting with assembling and packaging of several binding books when she experienced pain in the right shoulder and neck. She included her own statement as well as statements from the employing establishment and a coworker. There is uncontroverted evidence that appellant was performing the task in the performance of her federal duties. Therefore, the Board finds that appellant experienced the employment incident at the time, place and in the manner alleged. Appellant, however, failed to submit medical evidence prior to the Office's October 10, 2003 decision. On September 10, 2003 the Office advised appellant of the evidence needed to establish her claim. Such evidence was not submitted. Absent medical evidence to establish that her medical condition was causally related to the August 9, 2002 work-related incident, appellant failed to carry her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought as determined by the postmark of the request.[13] The Office has discretion, however, to grant or deny a request that is made after this 30-day period. In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[14]

ANALYSIS -- ISSUE 2

Appellant's request for a hearing was postmarked November 13, 2003, more than 30 days after the Office issued its October 10, 2003 decision. Thus, the Office properly determined that appellant was not entitled to a hearing as a matter of right as her request was not filed in a timely fashion. The Office proceeded to exercise its discretionary authority in considering appellant's hearing request. The function of the Board on appeal is to determine whether there has been an abuse of discretion. In its January 15, 2004 decision, the Office properly determined that appellant could equally well address the issue through the reconsideration process by the submission of additional evidence. The Board finds that the Office acted within its discretionary authority.

[13] 20 C.F.R. § 10.616.

[14] *Marilyn F. Wilson,* 52 ECAB 347 (2001).

CONCLUSION -- ISSUE 2

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on August 9, 2002 and that the Office properly denied appellant's request for a hearing.[15]

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 15, 2004 and October 10, 2003 are affirmed.

Issued: June 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[15] The Board notes that appellant's appeal to the Board was accompanied by a copy of Dr. Abend's November 7, 2003 report. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its merit decision dated October 10, 2003; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.