United States Department of Labor
Employees' Compensation Appeals Board

A.O, Appellant	)	
and	)	**Docket No. 14-251**
	)	**Issued: June 2, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Augusta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 15, 2013 appellant filed a timely appeal from a September 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying an occupational disease claim and an October 30, 2013 nonmerit decision denying reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established bilateral upper extremity conditions in the performance of duty; and (2) whether OWCP properly denied her request for reconsideration.

On appeal, appellant asserted that new evidence submitted with her October 11, 2013 request for reconsideration was sufficient to establish her claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 30, 2013 appellant, then a 42-year-old flat sorting machine operator, filed an occupational disease claim (Form CA-2) for a bilateral shoulder condition and torn right rotator cuff in the performance of duty. She attributed the condition to repetitive upper extremity motions while casing mail. Appellant asserted that on an unspecified date, she was told by an emergency room physician that she had a torn rotator cuff. She did not stop work.

In a May 14, 2013 letter, OWCP advised appellant of the type of evidence needed to establish her claim including a statement from her attending physician explaining the medical reasons why repetitive upper extremity motions at work would cause the claimed condition. It afforded her 30 days to submit such evidence. There is no additional evidence of record prior to June 24, 2013.

By decision dated June 24, 2013, OWCP denied appellant's claim on the grounds that causal relationship was not established. It found that she established as factual that she cased mail as alleged. However, appellant failed to submit any medical evidence in support of her claim.

On June 26, 2013 appellant requested reconsideration. She submitted a June 19, 2013 letter from Dr. John P. Hancock, an attending Board-certified internist, holding her off work "due to injuries to her shoulder and low back pain. [Appellant's] job which require[d] multiple sorting and lifting may further aggravate these injuries."

In a July 9, 2013 letter, OWCP advised appellant that Dr. Hancock's letter was insufficient to establish her claim. It directed her to submit additional medical evidence containing a definite diagnosis and explaining how and why her job duties would cause or contribute to the diagnosed condition. OWCP emphasized that such evidence was crucial to appellant's claim. Appellant was afforded until August 24, 2013 to submit additional evidence.

In response, appellant submitted an August 8, 2013 letter from Dr. Hancock which noted that she had a history of persistent left shoulder problems and was currently under treatment for right shoulder pain. A recent magnetic resonance imaging scan of the right shoulder showed degenerative changes of the acromioclavicular joint, subacromial bursitis and "high grade rotator cuff tendinopathy but no frank tear." Dr. Hancock diagnosed a lumbar strain. He opined that lifting, sorting, pushing and reaching at work caused right shoulder and lumbar pain.

By decision dated September 10, 2013, OWCP partially vacated and modified its June 24, 2013 decision to find that Dr. Hancock's additional report established the diagnoses of right shoulder impingement, acromioclavicular degeneration and a lumbar strain. It found, however, that his opinion was insufficient to establish causal relationship as he did not explain how and why casing mail, lifting, pushing, sorting and reaching would cause or aggravate the diagnosed conditions. OWCP further found that appellant had not yet claimed a lumbar injury or condition.

On October 11, 2013 appellant requested reconsideration on the appeal rights form provided with the September 10, 2013 decision. There is no additional argument or evidence of record received prior to October 30, 2013.

By decision dated October 30, 2013, OWCP denied reconsideration on the grounds that appellant's October 11, 2013 request did not contain new, relevant evidence or legal argument.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[4] To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.[5]

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained a bilateral shoulder condition and torn right rotator cuff due to repetitive upper extremity motions casing mail in the performance of duty. OWCP accepted that the identified work factors occurred at the time, place and in the manner alleged,

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] 20 C.F.R. § 10.5(q).

[5] *Solomon Polen*, 51 ECAB 341 (2000).

but denied the claim on June 24, 2013 as the medical evidence did not support that the identified work factors caused or aggravated any medical condition. Based on an August 8, 2013 report from Dr. Hancock, an attending Board-certified internist, it issued a September 10, 2013 decision finding that, although the diagnoses of right shoulder impingement and acromioclavicular degeneration were established, there was insufficient evidence that the identified work factors caused those conditions.

In support of her claim, appellant submitted the June 19 and August 8, 2013 letters from Dr. Hancock diagnosing degenerative changes of the acromioclavicular joint and right rotator cuff tendinopathy. Dr. Hancock stated that lifting, sorting, pushing and reaching at work caused right shoulder and lumbar pain. However, he did not explain why or how those physical tasks would cause or aggravate the conditions he diagnosed. Because Dr. Hancock did not include such an explanation in his reports, his opinion is not enough to meet appellant's burden of proof.[6]

OWCP advised appellant by May 14 and July 9, 2013 letters of the type of evidence needed to establish her claim, including a report from her attending physician stating the medical reasons that work factors would cause the claimed upper extremity conditions. However, appellant did not submit such evidence.

The Board finds that appellant submitted insufficient rationalized medical evidence to establish that work factors caused or aggravated the claimed shoulder condition. Therefore, OWCP's September 10, 2013 decision was proper under the law and circumstances of this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[7] section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[8] 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), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[9]

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2).

[9] *Id*. at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[10] Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.[11] When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether it 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

OWCP denied appellant's occupational disease claim by decisions dated June 24 and September 10, 2013. Appellant requested reconsideration on October 11, 2013. However, there is no additional evidence of record submitted in support of her request for reconsideration. OWCP denied reconsideration by decision dated October 30, 2013 on the grounds that appellant's October 11, 2013 request did not contain new, relevant evidence or legal argument.

Appellant's October 11, 2013 request for reconsideration consisted only of the appeal rights form, without additional evidence or argument. The Board accordingly finds that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserted that new evidence submitted with her October 8, 2013 request for reconsideration was sufficient to establish her claim. As stated above, there is no evidence of record submitted in support of the October 8, 2013 request for reconsideration. Therefore, any evidence which appellant may have submitted with her October 8, 2013 request form is not presently in the case record now before the Board.

CONCLUSION

The Board finds that appellant did not establish that she sustained bilateral upper extremity conditions in the performance of duty. The Board further finds that OWCP properly denied reconsideration.

[10] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[11] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 30 and September 10, 2013 are affirmed.[13]

Issued: June 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] Effective May 19, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.