United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 07-1968**
	)	**Issued: December 28, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 7, 2006 merit decision denying her occupational injury claim and the March 6, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment; and (2) whether the refusal of the Office to reopen appellant's case for further consideration on the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

FACTUAL HISTORY

On August 29, 2006 appellant, then a 50-year-old casual clerk, filed an occupational disease claim Form CA-2 alleging that she sustained a full thickness tear of the supraspinatus

tendon as a result of employment activities. She alleged that she first became aware that her condition was caused by her employment on April 6, 2006.

In an undated statement, appellant indicated that she began noticing dull pain in her right shoulder on July 1, 2005 and was diagnosed with full thickness tear of the supraspinatus tendon following a magnetic resonance imaging (MRI) scan. In April 2006, she was informed that surgery would be required.

Appellant submitted a report dated July 20, 2005 from Dr. Claudette Macklin, a Board-certified internist, who stated that an abnormal MRI scan of the right shoulder revealed a full thickness tear of the supraspinatus tendon. On July 25, 2005 Dr. Macklin referred appellant to an orthopedist for evaluation. A July 31, 2006 report, bearing an illegible signature, reflected that appellant had been experiencing shoulder pain and weakness, for approximately one year, from a rotator cuff tear. An October 23, 2006 note documents that a follow-up orthopedic elective appointment was scheduled with Dr. Benjamin Goldberg, a Board-certified orthopedic surgeon.

In a letter dated September 20, 2006, the Office informed appellant that the evidence submitted was insufficient to establish her claim and requested detailed information regarding the activities she believed contributed to her condition and a comprehensive medical report with a diagnosis, results of examinations and tests and a doctor's opinion with medical reasons on the cause of her condition.

In response to the Office's request, appellant submitted a narrative statement dated October 11, 2006. She indicated that her duties as a clerk, which included pushing heavy equipment, setting up machines for keying and lifting heavy sacks, caused her significant pain in her hand and shoulder. Appellant stated that she routinely complained to her supervisor and asked for assistance, indicating: "Sometimes I got help, sometimes I did n[o]t."

The record contains documents from the Illinois Department of Human Services relating to appellant's medical eligibility; employing establishment letters dated March 23 and April 10, 2006, relating to her job assignments; referrals from Dr. Macklin for an MRI scan of the right hand and for an orthopedic evaluation; and July 31, 2006 progress notes, bearing an illegible signature, noting that appellant was experiencing left shoulder pain and that an MRI scan revealed a full thickness tear of the supraspinatus tendon. Appellant submitted September 22, 2006 occupational therapy notes, signed by Bonnie Bula, who noted that appellant had been diagnosed with a right rotator cuff tear and that she continued to experience problems with range of motion, strength, endurance and extreme pain. Noting that the onset of appellant's condition was June 30, 2005, Ms. Bula stated that appellant "was working in the [employing establishment], lifting, when she felt pain."

By decision dated December 7, 2006, the Office denied appellant's claim on the grounds that the evidence submitted failed to demonstrate that the claimed medical condition was causally related to established employment factors, specifically, her duties as a postal employee.

On January 5, 2007[1] appellant requested reconsideration, reiterating her belief that her right shoulder tear was caused by her duties at the employing establishment, where she had worked since 1993. She stated that she "did all kinds of work," including working on the dock as a mail handler, working in the culling unit, placing trays on hand trucks and loading and unloading trucks.

Appellant submitted follow-up reports from Dr. Macklin dated August 9 and September 29, 2005 and a September 12, 2005 report from Friend Family Health Center, bearing an illegible signature, reflecting that she was experiencing right shoulder pain. She also submitted a July 20, 2005 report of an MRI scan of the right upper extremity; a confirmation of a January 29, 2007 appointment with Dr. Goldberg; and photographs of employees purportedly working in the employing establishment.

By decision dated March 6, 2007, the Office denied appellant's request for reconsideration on the grounds that she neither raised substantive legal questions nor submitted new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[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) a factual statement identifying the 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.[5] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed

[1] Appellant's statement was actually dated January 5, 2006. However, as it was received on January 11, 2007, in response to the Office's December 7, 2006 decision, the Board presumes that the statement was signed on January 5, 2007.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[6] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

ANALYSIS -- ISSUE 1

The Office accepted that the work-related events occurred as alleged by appellant, namely that she performed her required duties as a casual clerk. The issue at hand, therefore, is whether the medical evidence submitted is sufficient to establish that her diagnosed condition is causally related to the employment factors identified. The Board finds that appellant has submitted insufficient medical evidence to establish that her diagnosed medical condition was caused or aggravated by factors of her federal employment.

The record contains numerous reports from Dr. Macklin. However, she did not provide a narrative report containing findings on examination and a complete factual and medical history. Moreover, none of Dr. Macklin's reports offers an opinion on the cause of appellant's diagnosed full thickness tear of the supraspinatus tendon. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

Other medical evidence of record (including physicians' notes, appointment confirmations, MRI scan reports and referral forms) which does not contain an opinion on causal relationship, is of diminished probative value and is insufficient to establish appellant's claim. As an occupational therapist is not a physician as defined under the Act, Ms. Bula's notes are of no probative value.[9] Finally, reports bearing illegible signatures, lacking proper identification, cannot be considered as probative evidence.[10]

Appellant expressed her belief that her condition resulted from her work activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[11] Neither the fact

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[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

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

[9] Section 8101(2) of the Act provides in pertinent part as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Merton J. Sills*, *supra* note 9.

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by work-related activities is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As the medical evidence of record does not contain a rationalized medical opinion explaining how work-related incidents or factors caused or aggravated any medical condition or disability, she has failed to satisfy her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of her claim by written request to the Office, identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(ii) Advancing a point of law or fact not previously considered by the Office; or

"(iii) Constituting relevant and pertinent evidence not previously considered by the Office."[13]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs 10.606(b)(2)(i) through (iii) of that section will be denied by the Office without review of the merits of the claim.[14]

ANALYSIS -- ISSUE 2

Appellant's January 5, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The Board also finds that appellant did not submit relevant and pertinent evidence not previously considered by the Office. In its December 7, 2006 decision, the Office denied appellant's claim on the grounds that she failed to submit a rationalized medical opinion

[12] *Id.*

[13] 20 C.F.R. § 10.606.

[14] *Id*. at § 10.608(b).

explaining the causal relationship between her diagnosed condition and the accepted work incident. In support of her request for reconsideration, appellant submitted follow-up reports from Dr. Macklin dated August 9 and September 29, 2005; a September 12, 2005 report from Friend Family Health Center, reflecting that she was experiencing right shoulder pain; a July 20, 2005 report of an MRI scan; a confirmation of a January 29, 2007 appointment with Dr. Goldberg; and photographs of employees purportedly working in the employing establishment. However, the evidence submitted was not relevant to the issue at hand, namely whether appellant's torn rotator cuff was causally related to her employment duties. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her January 5, 2007 request for reconsideration .

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2007 and December 7, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 28, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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