

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA L. GIBSON and U.S. POSTAL SERVICE,
POST OFFICE, Grindstone, PA

*Docket No. 02-444; Submitted on the Record;
Issued July 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right shoulder condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

On February 12, 2001 appellant, a 61-year-old mail clerk, filed a claim for benefits, alleging that she sustained a torn rotator cuff condition caused by repetitive motions of lifting, pulling and stretching above the shoulder. She submitted periodic treatment notes from September 2000 through January 2001 from Dr. Scott L. Baron, a Board-certified orthopedic surgeon; a November 10, 2000 operative report from Dr. Baron; a March 6, 2001 form report on which Dr. Baron checked a box indicating her rotator cuff condition was caused or aggravated by employment activity; and a February 6, 2001 report from Dr. Baron.

In his February 6, 2001 report, Dr. Baron noted appellant's complaints of limited motion when lifting above chest level, without any weight in her hand. He advised that her condition was improving, overall and opined that she could return to work with limitations at that point. Dr. Baron stated that appellant was not going to be able to drag 70 pounds of mailbags and advised that she should avoid repetitive use of her right arm at or above the horizontal level.

In a letter to appellant dated May 24, 2001, the Office requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, describing the history of the alleged work incident and indicating how the reported work incident caused or aggravated the claimed injury. The Office gave appellant 30 days to submit additional evidence. Appellant did not submit any additional medical evidence.

By decision dated August 14, 2001, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed condition in the performance of duty.

By letter dated August 30, 2001, appellant requested reconsideration.

By decision dated September 24, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant has not met her burden of proof to establish that her alleged right shoulder condition was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period 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.² 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.³

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 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 usually rationalized medical 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 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.⁴

In the present case, the only medical evidence appellant submitted in support of his claim were the periodic treatment reports from Dr. Baron. These reports contain findings on examination and brief, conclusive statements summarily indicating that appellant had a right rotator cuff condition caused by repetitive activities at work, but did not provide a probative,

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

rationalized opinion that her alleged carpal tunnel condition was caused or aggravated by factors or conditions of her federal employment.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence.

The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence. None of the reports appellant submitted contain any rationalized medical opinion relating the cause of the alleged condition to factors of her federal employment.⁶ The reports did not indicate an awareness of appellant's specific employment duties and did not explain the process through which factors of appellant's employment would have caused the claimed right shoulder condition. Thus, they are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions. Furthermore, the form report from Dr. Baron that supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.⁷

Accordingly, as appellant failed to submit any probative, rationalized medical evidence in support of a causal relationship between her claimed condition and factors or incidents of employment, the Office properly denied appellant's claim for compensation.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered

⁵ *See id.*

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁸ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁹ *Howard A. Williams*, 45 ECAB 853 (1994).

and rejected by the Office in prior decisions, or is not pertinent to the issue on appeal. Additionally, appellant's letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's September 24, 2001 decision.¹⁰

The decisions of the Office of Workers' Compensation Programs dated September 24 and August 14, 2001 are hereby affirmed.

Dated, Washington, DC
July 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

¹⁰ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).