

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET ROMERO and U.S. POSTAL SERVICE,
POST OFFICE, Bakersfield, CA

*Docket No. 03-535; Submitted on the Record;
Issued April 14, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant established that her medical conditions were causally related to her employment; and (2) whether the Office of Workers' Compensation Programs properly denied review of appellant's request for reconsideration.

On August 30, 2001 appellant, then a 44-year-old letter carrier, filed a claim for occupational disease alleging that since August 11, 1999 she was aware that her cervical sprain and right shoulder impingement syndrome were caused by her employment.

By letter dated October 25, 2001, the Office advised appellant regarding the kind of evidence she needed to support her claim.

In a report dated November 7, 2001, Dr. Vincent J. Maddela, appellant's treating physician and a specialist in family practice, stated that appellant had a cervical neck pain and right shoulder pain.

By decision dated November 30, 2001, the Office denied appellant's claim on the grounds that the evidence failed to establish that the conditions were caused by her employment.

By letter dated December 5, 2001, appellant requested an oral hearing.

In a report dated December 6, 2001, Dr. Maddela noted a familiarity with appellant's history of injury and opined that based on appellant's 23 years as a letter carrier, her cervical neck strain and right shoulder numbness were causally related to her employment. He noted that appellant was required to lift parcels weighing 70 pounds, to carry a 35-pound satchel and to case mail which required hours of twisting, turning and raising her shoulders. Dr. Maddela also noted that appellant drove a mail truck on a daily basis.

A hearing was held on July 24, 2002. By decision dated September 23, 2002, the hearing representative affirmed the Office's November 30, 2001 decision denying appellant's claim for occupational disease.

By letter dated October 29, 2002, appellant requested reconsideration.

By decision dated November 14, 2002, the Office denied review of its prior decisions.

The Board finds that appellant failed to establish that her medical conditions were caused by her employment.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

Dr. Maddela's November 7, 2001 report does not establish that appellant's condition was causally related to her employment. He noted appellant's conditions but did not provide a rationalized medical opinion in support of the causal relationship of her condition and her employment. In his December 6, 2001 report, Dr. Maddela related appellant's work history, noting her lifting requirements and determined that her conditions were causally related to her employment.² However, he did not provide a rationalized medical opinion causally relating appellant's neck and shoulder conditions to the identified factors of employment to which appellant attributes her condition, carrying a mailbag on her back, lifting parcels and sorting mail. Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by her federal employment, is sufficient to establish causal relation.³

The Board further finds that the Office properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002).

² The record includes an essentially normal cervical spine and right shoulder magnetic resonance imaging scan taken on July 31, 2002. The right shoulder scan revealed mild degenerative changes.

³ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may--

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”⁴

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In this case, relevant and pertinent new medical evidence did not accompany appellant's request for reconsideration. This is important since the underlying issue in the claim, whether appellant established that her claimed condition was causally related to her work factors, is essentially medical in nature.

In its November 14, 2002 decision, the Office correctly noted that appellant did not provide any new and relevant evidence or raise any substantive legal arguments not previously considered sufficient to warrant a merit review. Appellant also did not argue that the Office erroneously applied or interpreted a point of law. Consequently, appellant is not entitled to a merit review on the merits of the claim based upon any of the requirements under 20 C.F.R. § 10.606(b)(2). Accordingly, the Board finds that the Office acted within its discretion in denying appellant's request for reconsideration.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs dated November 14 and September 23, 2002 are affirmed.

Dated, Washington, DC
April 14, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member