United States Department of Labor
Employees' Compensation Appeals Board

TRACI A. RANIELLO, Appellant	)	
and	)	**Docket No. 06-3**
	)	**Issued: January 10, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Providence, RI, Employer	)	

Appearances:
Traci A. Raniello, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2005 appellant filed a timely appeal from the September 7, 2005 nonmerit decision of the Office of Workers' Compensation Programs which denied her June 9, 2005 request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial. The Board also has jurisdiction to review the Office's December 10, 2004 merit decision denying appellant's claim for compensation

ISSUES

The issues are: (1) whether appellant sustained a right shoulder injury in the performance of duty in 2004; and (2) whether the Office properly denied appellant's June 9, 2005 request for reconsideration.

FACTUAL HISTORY

On August 8, 2004 appellant, then a 38-year-old city letter carrier, filed a claim alleging that she sustained a repetitive motion injury to her right shoulder, she noted, "I had started experiencing constant pain in my right shoulder. Pain increased at work when I was filing. I had

been double filing (four hours) for a week at this point and almost two weeks when I was seen by a doctor."

On September 27, 2004 the Office requested that appellant submit additional evidence to support her claim, including a physician's opinion, supported by a medical explanation, as to how the reported work factors caused or aggravated the claimed condition. The Office noted: "This explanation is crucial to your claim."

On October 12, 2004 the Office received progress notes and other documents from a chiropractor's office. The evidence showed that appellant saw her chiropractor on July 2, 2004 for right suprascapular tendinitis and right biceps tendinitis. The chiropractor saw her five more times through July 23, 2004.

In a decision dated December 10, 2004, the Office denied appellant's claim for compensation. The Office found that the evidence supported that the claimed event occurred as alleged, but there was no medical evidence providing a diagnosis that could be connected to the event. The Office explained that medical evidence must be signed by a physician and must establish that appellant sustained a personal injury resulting from factors of her employment. The Office found that the physical therapy notes she submitted did not meet the criteria.

On June 9, 2005 appellant requested reconsideration. She wrote:

> "I am sending you a letter from my treating orthopedic doctor concerning the injury. The problem with my shoulder was diagnosed the same by her as well as my chiropractor. During the time of my injury I was working 60 or more hours a week and 6 days a week. I had no time or energy to have injury myself anywhere but at work. I went through a period of two weeks of filing for four hours a day which started my shoulder's pain.
>
> "Hopefully Dr. Migliori's letter fulfills what medical documentation needed by you to reverse the decision."

In a decision dated September 7, 2005, the Office denied appellant's request for reconsideration. The Office noted that it had received no report from her orthopedic doctor and, therefore, appellant's request for reconsideration was insufficient to reopen her case because it neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place

[1] 5 U.S.C. §§ 8101-8193.

and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[2]

Causal relationship is a medical issue[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

ANALYSIS -- ISSUE 1

Appellant claimed that she experienced constant pain in her right shoulder after double filing at work for four hours a day over the course of two weeks. The Office accepts that the claimed event occurred as alleged. Appellant has, therefore, established that she experienced a specific exposure occurring at the time, place and in the manner alleged.

The question for determination, therefore, is whether the established work activity caused an injury. It is here that the evidence falls short. Causal relationship is a medical issue that requires a physician's rationalized opinion on whether the established work activity caused or aggravated appellant's diagnosed condition. She initially supported her claim with documentation from her chiropractor's office. Section 8101(2) of the Act provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7] Because the documentation from appellant's chiropractor shows no diagnosis of a spinal subluxation demonstrated by x-ray, the chiropractor cannot be considered a "physician" as defined under the Act. As such, he is not competent to provide the rationalized medical opinion appellant must submit to establish the essential element of causal relationship.[8] The Board will,

[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] 5 U.S.C. § 8101(2).

[8] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

therefore, affirm the Office's December 10, 2004 decision, denying appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[9] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[10]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[11]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[12] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[13]

ANALYSIS -- ISSUE 2

Appellant made her request for reconsideration on June 9, 2005, well within the one-year period following the December 10, 2004 denial of her claim. Her request is, therefore, timely. The question for determination, therefore, is whether this request meets at least one of the three criteria for obtaining a merit review of her case.

Although appellant stated that she was sending the Office a letter from her orthopedic doctor concerning her injury, no such letter appeared in the case record prior to the Office's September 7, 2005 decision, denying reconsideration. The record does not support that she submitted medical evidence pertaining to her claim. The request does not show that the Office erroneously applied or interpreted a specific point of law, does not advance a relevant legal

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.605 (1999).

[11] *Id*. § 10.606.

[12] *Id*. § 10.607(a).

[13] *Id*. § 10.608.

argument not previously considered by the Office and contains no relevant and pertinent new evidence not previously considered by the Office. Under the circumstances, appellant's June 9, 2005 letter and her reconsideration request fail to meet at least one of the three criteria for obtaining a merit review of her case. The Board will, therefore, affirm the Office's September 7, 2005 decision to deny appellant's request.[14]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a right shoulder injury in the performance of duty in 2004. Although the Office accepted that the employment activity occurred as alleged, the record contains no reasoned opinion from a physician explaining how this employment activity caused or aggravated a diagnosed medical condition.

The Board also finds that the Office properly denied appellant's June 9, 2005 request for reconsideration. As no medical evidence accompanied the request, there was no basis to reopen her case for a merit review under the applicable criteria.

[14] The Board received a copy of a February 15, 2005 report from Dr. Sidney P. Migliori, a Board-certified orthopedic surgeon. While this appears to be the medical evidence appellant intended to submit with her June 9, 2005 request for reconsideration, the Board has no jurisdiction to review it. "The review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision." 20 C.F.R. § 501.2(c). As Dr. Migliori's February 15, 2005 report was not before the Office when it issued its September 7, 2005 decision, the Board may not review it on this appeal. Appellant, however, has one year from the date of this decision to submit new and relevant evidence to the Office and request reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2005 and December 10, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board