

On October 17, 2006 appellant, then a 49-year-old employee health nurse, filed an occupational disease claim (Form CA-2) asserting that she sustained bilateral elbow tendinitis on or before October 10, 2006. She attributed her condition to repetitive upper extremity motion

while administering injections and performing computer data entry. Appellant did not stop work.

In an October 27, 2006 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. The Office emphasized the need to submit a rationalized report from her attending physician explaining how and why the identified work factors would cause the claimed bilateral elbow tendinitis.

In a November 7, 2006 letter, an employing establishment nursing supervisor confirmed that appellant performed “repetitive motions giving injections, typing on computers, entering data into database on a daily basis.” The supervisor stated that appellant reported bilateral elbow tendinitis after the introduction of a new syringe. The employing establishment also provided a position description.

In a November 12, 2006 letter, appellant described the repetitive upper extremity motions she performed each day at work, including giving injections, taking vital signs, data entry and making and answering telephone calls. She noted administering many additional injections in October 2006 as part of a flu vaccine program.

In duty status reports dated October 17 to November 30, 2006, Dr. Alan E. Hibberd, an attending Board-certified orthopedic surgeon, diagnosed medial and lateral epicondylitis. He prohibited repetitive motion of the upper extremities. In a November 2, 2006 slip, Dr. Hibberd stated that appellant was not to use her right arm at work for two weeks.

By decision dated January 26, 2007, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office accepted that the identified employment factors occurred as alleged. The Office found, however, that appellant submitted insufficient rationalized medical evidence explaining how and why those factors would cause the claimed condition.

In a letter postmarked February 27, 2007, appellant requested an oral hearing.

By decision dated March 30, 2007, the Office denied appellant’s request for a hearing on the grounds that it was untimely filed. The Office found that appellant’s request for a hearing was postmarked on February 27, 2007, more than 30 days after issuance of the Office’s January 26, 2007 decision. The Office additionally denied appellant’s request for a hearing on the grounds that the issues involved could be addressed equally well by requesting reconsideration and submitting new evidence establishing that she sustained the claimed condition in the performance of duty.¹

¹ Appellant submitted new evidence accompanying her request for appeal. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 the Act; 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.³ 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.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 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.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that she developed bilateral elbow tendinitis due to repetitive motion administering injections and performing computer data entry. The Office accepted that appellant performed such duties, but denied her claim on the grounds that the medical evidence was not sufficient to establish that these work factors caused or aggravated any medical condition.

In support of her claim, appellant submitted reports from Dr. Hibberd, an attending Board-certified orthopedic surgeon, who submitted form reports dated October 17 to 30, 2006 diagnosing medial and lateral epicondylitis and noting work restrictions. However, he did not explain how or why repetitive upper extremity motion or any of the identified work factors

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

would cause or aggravate the diagnosed conditions. Dr. Hibberd did not describe how the accepted work factors of administering injections, answering the telephone and performing computer data entry would relate to appellant's physical condition. His opinion is thus insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship.⁶

Therefore, appellant has not established that she sustained bilateral elbow tendinitis in the performance of duty, as she submitted insufficient rationalized medical evidence to establish the asserted causal relationship.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁷ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁸ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁹

ANALYSIS -- ISSUE 2

The Office denied appellant's claim by January 26, 2007 decision. Appellant's letter requesting an oral hearing was postmarked on February 27, 2007, more than 30 days after the January 26, 2007 decision. Thus, the Office properly found that appellant's request for a review of the written record was not timely filed under section 8124(b)(1) of the Act and that she was not entitled to an examination of the written record as a matter of right.

The Office then exercised its discretion and determined that appellant's request for a review of the written record could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the claimed bilateral elbow tendinitis was causally related to her federal employment. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.¹⁰ The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. §§ 10.616, 10.617.

⁹ *Claudio Vasquez*, 52 ECAB 496 (2002).

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990).

Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral elbow tendinitis in the performance of duty as alleged. The Board further finds that the Office properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 30 and January 26, 2007 are affirmed.

Issued: October 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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