United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 08-2200**
	)	**Issued: April 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, GA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 6, 2008 appellant filed a timely appeal from a January 25, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim and a May 7, 2008 decision denying his request for a telephonic hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant established that he sustained a right finger injury in the performance of duty; and (2) whether the Office properly denied appellant's request for a telephonic hearing as untimely.

FACTUAL HISTORY

On December 12, 2007 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on January 8, 2007 he became aware that he acquired trigger finger due to his employment. He claimed that he used his right hand to finger mail and

had noticed pain over a long period of time, which worsened after an increased holiday workload in 2006. Appellant did not stop work. The employing establishment controverted the claim.

Appellant submitted status reports dated January 25 and February 2, 2007 from Dr. Rachna A. Patel, Board-certified in family medicine, who diagnosed trigger finger and noted that appellant should limit the use of his right hand at work. Appellant also provided physical therapy status reports dated January 29 through February 2, 2007.

In a December 18, 2007 letter, the Office notified appellant of the deficiencies in his claim and requested additional information.

In reports dated January 25 through February 2, 2007, Dr. Patel noted that appellant used his right hand and right thumb every day at work to check mail and began experiencing gradual pain. Appellant experienced associated stiffness, popping and clicking and his symptoms were exacerbated by repetitive grasping or moving. When he woke up a few days prior, his right thumb was very stiff and he was not able to move it. Dr. Patel diagnosed trigger finger and metacarpophalangeal joint sprain. He prescribed medication and physical therapy. Appellant provided additional physical therapy reports.

By decision dated January 25, 2008, the Office found that the work activities occurred as alleged. However, it denied appellant's claim on the grounds that he did not establish that he sustained an injury causally related to his employment activities.

On March 3, 2008 appellant filed a request for a telephonic hearing before an Office hearing representative. He submitted additional medical evidence.

By decision dated May 6, 2008, the Office denied appellant's request for a telephonic hearing on the grounds that he did not submit his request within 30 days of the January 25, 2008 decision. It found that the issue in his case could equally be addressed by requesting reconsideration and submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that he is an "employee" within the meaning of the Act[3] and that he filed his claim within the applicable time limitation.[4] The employee must

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant used his right hand to finger mail in the performance of his federal duties. The issue is whether appellant established that he sustained trigger finger as a result of his employment. The Board finds that the medical evidence is not sufficient to establish causation.

Appellant submitted medical reports from Dr. Patel, who noted that appellant used his hand to check mail at work and that he experienced gradual pain in his right hand which was exacerbated by repetitive grasping or movement. Dr. Patel diagnosed trigger finger and metacarpophalangeal joint sprain, however, he failed to address the cause of the injury. He did not explain how grasping or fingering mail would cause or contribute to the diagnosed trigger finger condition. Thus, these reports are insufficient to establish that appellant sustained a work-related injury. Dr. Patel failed to opine on the cause of appellant's trigger finger.[8]

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[7] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] A physician's report that does not address causation is of little probative value. *See Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

Moreover, the physical therapy reports of record are insufficient to establish causal relationship. Physical therapists are not included in the definition of a physician under 5 U.S.C. § 8101(2). Thus, these reports are also of no probative value on this issue.[9]

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a right trigger finger due to his employment duties.[10]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant not satisfied with a decision of the Office is entitled to a hearing before an Office hearing representative when the request is made within 30 days after issuance of the Office's decision.[11] A claimant is not entitled to a hearing as a matter of right if the request is not made within 30 days of the Office's decision.[12] The Office has the discretion to grant or deny any request that is made after the 30-day period.[13] Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).[14]

ANALYSIS -- ISSUE 2

By decision dated January 25, 2008, the Office denied appellant's claim. On March 3, 2008 appellant requested a telephonic hearing before an Office hearing representative. As his request was not filed within 30 days of the January 25, 2008 decision, the Board finds that it was untimely and appellant was not entitled to a hearing as a matter of right.[15]

The Office exercised its discretionary authority under section 8124 by considering whether to grant a hearing. It found that appellant's claim could be addressed equally well by requesting reconsideration under section 8128 and submitting additional evidence. The only limitation on the Office's authority is reasonableness. The Board has held that it is an appropriate exercise of such discretion to apprise an appellant of the right to further proceedings

[9] Under section 8101(2), the definition of physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[10] Subsequent to the issuance of the Office decision, appellant submitted additional evidence. As this evidence was not previously submitted to the Office for consideration prior to its decision of January 25, 2008 it represents new evidence which cannot be considered by the Board in the current appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). *See also Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

[12] 20 C.F.R. § 10.616(b).

[13] *Id. See Hubert Jones, Jr.*, 57 ECAB 467 (2006); *André Thyratron*, 54 ECAB 257 (2002).

[14] *See Teresa M. Valle*, 57 ECAB 542 (2006); *Henry Moreno*, 39 ECAB 475 (1988).

[15] The Board has held that section 8124(b)(1) is unequivocal in setting forth the limitation in requests for hearings. *See R.T.*, 60 ECAB ___ (Docket No. 08-408, issued December 16, 2008).

under the reconsideration provisions of section 8128.[16] There is no evidence to establish that the Office abused its discretion in denying appellant's request for a hearing. The Board finds that the Office properly denied appellant's request for a telephonic hearing.

CONCLUSION

The Board finds that appellant did not establish that he sustained a right finger injury in the performance of duty. Further, the Board finds that the Office properly denied appellant's request for a telephonic hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the May 7 and January 25, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 20, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[16] *See André Thyratron*, *supra* note 13.