

**United States Department of Labor
Employees' Compensation Appeals Board**

C.T., Appellant)

and)

U.S. POSTAL SERVICE, ROBERT E. PRICE)
STATION, Dallas, TX, Employer)

**Docket No. 09-70
Issued: March 3, 2009**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 9, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated December 7, 2007, April 11 and May 27, 2008, finding that she did not sustain an injury while in the performance of duty and nonmerit decision dated September 17, 2008, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUES

The issues are: (1) whether appellant has established that she sustained a right knee injury while in the performance of duty; and (2) whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 9, 2007 appellant, then a 54-year-old letter carrier, filed a claim for an occupational disease. She alleged that on December 1, 2006 she first became aware of the pain, swelling and stiffness in her right knee. On October 8, 2007 appellant first realized that her

symptoms were caused or aggravated by constant standing, walking, casing mail, bending and driving at work.

Appellant submitted medical reports dated April 18, June 18 and July 2, 2007 of Dr. John T. Wey, a Board-certified orthopedic surgeon, which stated that appellant sustained rotator cuff tendinitis of the right shoulder and carpal tunnel syndrome and sprain of the left wrist.

By letter dated November 9, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence including, a rationalized medical report from an attending physician which described her symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to her condition.

In a November 26, 2007 letter, appellant described her work duties. She cased mail three to four hours per day which involved standing. Appellant walked two or more hours delivering express mail and parcels. She occasionally climbed stairs which she tried to avoid since it required her to bend both of her knees. Driving caused pain as she got in and out of her vehicle. Appellant walked or worked on concrete which did not help her condition. She stated that she was on her feet practically all day long with the exception of 30-minute breaks. Appellant had no activities or hobbies except attending church on Sunday, an occasional Bible class on Wednesday. She experienced problems with getting up from a chair and sofa. Appellant experienced some relief from the pain and swelling in her right knee by walking and standing less and resting.

Appellant submitted reports dated October 10 and November 7, 2007 from Dr. Louise Lamarre, Board-certified in emergency medicine, who treated her for a work-related right knee injury. Dr. Lamarre noted appellant's work duties which involved standing, walking and stooping on a regular basis, getting in and out of a truck on her route and climbing stairs. She diagnosed right knee internal derangement. Dr. Lamarre opined that the diagnosed condition was causally related to appellant's work duties.

By decision dated December 7, 2007, the Office denied appellant's claim. It found the medical evidence insufficient to establish that her right knee condition was causally related to the established work-related duties. In an undated letter, appellant requested a review of the written record by an Office hearing representative.

By decision dated April 11, 2008, an Office hearing representative affirmed the December 7, 2007 decision. He found that appellant failed to submit rationalized medical evidence establishing that she sustained a right knee injury causally related to the established employment-related duties.

In a letter dated May 2, 2008, appellant requested reconsideration. In an April 22, 2008 report, Dr. Lamarre stated that appellant sustained a complex lateral meniscal tear of the right knee as demonstrated by a magnetic resonance imaging (MRI) scan. She opined that the diagnosed condition was caused by the employment duties she noted in a prior report.

By decision dated May 27, 2008, the Office denied modification of the April 11, 2008 decision. It found that the evidence submitted by appellant did not contain a rationalized medical opinion establishing that she sustained a right knee injury causally related to the established employment-related duties.

In a June 26, 2008 letter, appellant requested reconsideration. She submitted Dr. Lamarre's April 22, 2008 report, which was virtually identical to her previous report of the same date with the exception of her updated diagnosis of complex lateral meniscal tear of the right knee appearing in capitalized letters.

By decision dated September 17, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and duplicate in nature and, thus, insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 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 a causal relationship is 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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Gary J. Watling*, 52 ECAB 357 (2001).

identified by the claimant.⁴ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant performed the work duties of a letter carrier as alleged. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed right knee condition was caused or aggravated by her work-related duties.

Dr. Wey's reports stated that appellant sustained rotator cuff tendinitis of the right shoulder and carpal tunnel syndrome and sprain of the left wrist. He did opine that appellant sustained a right knee condition caused or aggravated by the accepted employment duties. Dr. Wey's reports are insufficient to establish appellant's claim.

Dr. Lamarre's October 10 and November 7, 2007 reports stated that appellant's right knee internal derangement was caused by the accepted employment duties. In an April 22, 2008 report, she opined that appellant's complex lateral meniscal tear of the right knee was caused by the established work-related duties. The Board has held that a medical opinion not supported by medical rationale is of little probative value.⁶ Dr. Lamarre did not provide medical rationale explaining how or why appellant's right knee conditions were caused by the accepted employment duties. She did not discuss the mechanism of the injury or its relationship to the employment factors. The Board, therefore, finds that Dr. Lamarre's reports are insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained a right knee condition causally related to the accepted factors of her federal employment as a letter carrier. Appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁷ the Office regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *Caroline Thomas*, 51 ECAB 451 (2000).

⁷ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(1)-(2).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In a June 26, 2008 letter, appellant disagreed with the Office's May 27, 2008 decision, which found the medical evidence of record insufficient to establish that she sustained a right knee condition causally related to her accepted employment factors. The relevant issue is whether her right knee condition was causally related to the accepted employment factors. The Board notes that this issue is medical in nature.

Appellant submitted Dr. Lamarre's April 22, 2008 report, which stated that her upgraded diagnosis of a complex lateral meniscal tear of the right knee was caused by the established work-related duties. This report was identical to her previous April 22, 2008 report, with the exception of the last paragraph, which provided her updated diagnosis in capitalized letters. 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.¹⁰ Dr. Lamarre's April 22, 2008 report is repetitive of evidence that was previously of record and addressed by the Office in its prior decision and, thus, does not constitute relevant and pertinent new evidence not previously considered by the Office.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.¹¹

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right knee injury while in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *Id.* at § 10.607(a).

¹⁰ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

¹¹ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 17, May 27 and April 11, 2008 and December 7, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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