United States Department of Labor
Employees' Compensation Appeals Board

E.J., Appellant	)	
and	)	**Docket No. 09-793**
	)	**Issued: October 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Merced, CA, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 20, 2009 appellant filed a timely appeal from a November 4, 2008 nonmerit decision of the Office of Workers' Compensation Programs, denying reconsideration of a February 28, 2008 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office properly declined to reopen appellant's claim for merit review under 5 U.S.C. § 8128.

FACTUAL HISTORY

On December 19, 2007 appellant, a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) for left shoulder pain. He attributed his condition to his daily duties which included holding mail in his left hand at approximately a 90-degree angle, lifting tubs and trays of mail as well as "lifting the roll up rear door approximately 20 times per day." Appellant

first became aware of his shoulder condition and its relationship to his employment on July 13, 2007.

Appellant submitted a report, dated July 13, 2007 signed by Dr. William L. Pistel, an orthopedic surgeon, who reported findings on examination and diagnosed appellant with a right shoulder rotator cuff injury "with a previous unrelated [acromioclavicular] separation" and shoulder impingement with thoracic outlet syndrome. Dr. Pistel opined, based on the "history and current complaints," that appellant's condition was related to his employment.

In a note dated January 29, 2008, Dr. Pistel reported that appellant was disabled from work January 29 to February 28, 2008. He diagnosed cervical spine herniated nucleus pulposus (HNP) and bilateral impingement syndrome.

By decision dated February 28, 2008, the Office denied appellant's claim because the evidence of record was insufficient to establish that the identified employment factors caused a medically diagnosed condition.

On October 1, 2008 appellant requested reconsideration. He did not submit any argument or evidence in support of his request for reconsideration.

By decision dated November 4, 2008, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

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.[1]

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.[2]

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

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

ANALYSIS -- ISSUE 1

Appellant identified holding mail in his left hand at approximately a 90-degree angle, lifting tubs and trays of mail as well as "lifting the roll up rear door approximately 20 times per day" as employment factors that caused his left shoulder condition. His burden is to establish, through production of probative medical evidence, that his left shoulder condition was caused by the identified employment factors. The evidence of record is insufficient to meet this burden of proof.

The medical evidence of record consists of a report and a note signed by Dr. Pistel. The July 13, 2007 report is of little probative value on the issue of causal relationship as it lacks an opinion on the causal relationship between appellant's condition and the identified employment factors. Medical conclusions unsupported by medical rationale are of diminished probative value and insufficient to establish causal relationship.[3] Moreover, although Dr. Pistel opined that, based on the "history and current complaints," appellant's condition was related to his employment, Dr. Pistel did not explain what appellant's "history" was or how it caused appellant's left shoulder condition. These deficiencies reduce the probative value of Dr. Pistel's July 13, 2007 report and therefore it is insufficient to satisfy appellant's burden of proof.

Dr. Pistel's January 29, 2008 note is also of little probative value on the issue of causal relationship. He diagnosed appellant with cervical spine HNP and bilateral impingement syndrome, but proffered no opinion concerning how or if the identified employment factors caused these conditions. Medical conclusions unsupported by medical rationale are of diminished probative value and insufficient to establish causal relationship.[4] Because Dr. Pistel provided no opinion on the causal relationship between the conditions he diagnosed and the identified employment factors, his January 29, 2008 note is of little probative value on the issue of causal relationship and is insufficient to satisfy appellant's burden of proof.

Causal relationship is a medical issue that can only be proved by the substantial, probative medical evidence. Appellant has not submitted such evidence and therefore the Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[5] the Office's regulations provide that the evidence or argument submitted by 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

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[3] *See Albert C. Brown*, 52 ECAB 152 (2000).

[4] *Id.*

[5] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he 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).

considered by the Office.[6] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[7] 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 on the merits.[8]

ANALYSIS -- ISSUE 2

On October 1, 2008 appellant requested reconsideration but did not submit any argument or evidence in support of his request. His reconsideration request therefore did not demonstrate that the Office erroneously applied or interpreted a specific point of law. Appellant's reconsideration request did not advance a relevant legal argument not previously considered by the Office. Therefore, he was not entitled to reconsideration under the first two enumerated statutory grounds. Finally, appellant did not submit relevant and pertinent new evidence not previously considered by the Office. Thus, he is not entitled to reconsideration under the third enumerated statutory ground.

Because appellant satisfied none of the statutorily enumerated grounds, the Office properly denied appellant's application for reconsideration without reopening the case for a review on the merits.

CONCLUSION

The Board finds appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board also finds that the Office properly denied his request for merit review under 5 U.S.C. § 8128.

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[6] 20 C.F.R. § 10.606(b)(2).

[7] *Id*. at § 10.607(a).

[8] *Id*. at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the November 4 and February 28, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board