

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Irvington, NJ, Employer)

**Docket No. 09-2027
Issued: May 12, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2009 appellant filed a timely appeal of an August 21, 2008 decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.¹

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

¹ For Office decisions dated November 19, 2008 or later, a claimant has 180 days to file an appeal with the Board. 20 C.F.R. § 501.3(e) (2009); 73 Fed. Reg. 62,190 (October 20, 2008). For Office decisions issued before November 19, 2008, a claimant had one year in which to file an appeal. See 20 C.F.R. § 501.3(d)(2) (2008). Therefore, the Board lacks jurisdiction over the Office's December 24, 2008 nonmerit reconsideration decision.

FACTUAL HISTORY

On October 29, 2007 appellant, then a 52-year-old sales and associate clerk, filed an occupational disease claim alleging that she developed severe joint pain in both shoulders, hands and legs due to her employment duties. She first realized that her condition was caused or aggravated by her employment activities on October 22, 2007. Appellant stopped work on October 30, 2007 and returned to work on February 11, 2008.

In an October 23, 2007 statement, appellant noted that her work duties included lifting, bending and stacking trays of mail. She indicated that these activities caused pain to her arms, shoulders and hands.

In an October 23, 2007 work status report, Dr. Rudolph Willis, a family medicine specialist, advised that appellant was unable to work between October 22 and 23, 2007 but could return to light duty on October 24, 2007. In a November 1, 2007 duty status report, he diagnosed carpal tunnel syndrome. Dr. Willis indicated that appellant could resume working and he listed restrictions.

On November 23, 2007 the Office advised appellant of the factual and medical evidence necessary to establish her claim. It allowed her 30 days to submit such evidence.

In a November 13, 2007 statement, appellant advised that she was providing documents pertaining to her alleged work injury. She noted that her treating physician had placed her on light duty but that the employing establishment did not have any light work available.

An October 2, 2007 work status form from Dr. Willis indicated treating appellant for right shoulder and right arm pain. Dr. Willis advised that appellant return to light duty on October 4, 2007 for two weeks. He also noted that appellant was unable to work between October 1 and 3, 2007. On October 9, 2007 Dr. Willis indicated that appellant was seen for a checkup. In an October 15, 2007 work status form, he diagnosed right shoulder pain. Dr. Willis noted that appellant was unable to work between October 15 and 21, 2007 and could resume regular duty on October 22, 2007.

On December 11, 2007 appellant stated that her job duties consisted of unloading trucks by lifting tubs of flats, dispatching mail by reaching and bending, throwing parcels into sacks and selling postal products. She noted experiencing pain in her hands, arms, shoulders and legs.

In a December 31, 2007 decision, the Office denied appellant's claim finding insufficient medical evidence to establish that her work duties caused or aggravated her alleged medical condition.

In a January 23, 2008 statement, appellant requested reconsideration. She asserted that the Office did not give her enough time to provide the necessary information and that she had difficulties obtaining a medical report from her treating physician. Appellant noted that the Office had permitted her to switch treating physicians prior to denying her claim. She stated that she was providing a physician's report with her reconsideration request and that the Office should directly contact her physician for any other information.

On January 22, 2008 Dr. Willis noted that appellant had been under his care for carpal tunnel syndrome, tendinitis and a knee injury. He advised that appellant resume regular duty on February 11, 2008. Dr. Willis also noted that appellant was unable to work from January 2 to February 10, 2008.

An undated report from Essex Hand Surgery indicated that appellant had a follow-up appointment scheduled for February 19, 2008.

In a May 1, 2008 decision, the Office denied modification of its December 31, 2007 decision, finding that the additional evidence submitted was insufficient to establish causal relationship between the claimed medical condition and appellant's employment duties. On August 21, 2008 it reissued this decision to reflect appellant's correct address.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.²

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 diagnosed condition is causally related to the employment factors identified by the claimant.³

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.⁴

² *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The record reflects that appellant's job requires unloading mail trucks, lifting tubs of flats and stacking trays of mail, but appellant submitted insufficient medical evidence to establish that she has a diagnosed medical condition causally related to these employment activities.

In a January 22, 2008 report, Dr. Willis noted treating appellant for carpal tunnel syndrome, tendinitis and a knee injury. He did not though discuss whether appellant's employment duties caused or aggravated these conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵ Dr. Willis' November 1, 2007 duty status report diagnosed carpal tunnel syndrome but did not address the issue of causal relationship. The work status reports dated October 2 and 15, 2007 diagnosed right shoulder and right arm pain without providing any opinion on causal relationship. Moreover, pain is a symptom, not a compensable medical diagnosis.⁶ None of the reports from Dr. Willis address causal relationship. Dr. Willis did not provide a rationalized medical opinion in which he explained why the particular work duties caused or aggravated a diagnosed medical condition.

The record also contains an undated report from Essex Hand Surgery noting the date of appellant's subsequent appointment. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2) and reports lacking proper identification do not constitute probative medical evidence.⁷ Even if the report had identified that it was written by a physician, it also failed to address the issue of causal relationship.

For these reasons, the medical evidence of record does not establish that appellant sustained an occupational disease in the performance of duty.⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

⁵ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

⁶ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

⁷ *See D.D.*, 57 ECAB 734 (2006) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim).

⁸ On appeal, appellant asserts that her appeal is based on the fact that she did not receive a copy of the Office's December 24, 2008 decision. As noted, the Board lacks jurisdiction over the Office's December 24, 2008 decision. Therefore, the Board's decision in the present case only pertains to the Office's August 21, 2008 decision, the only decision over which it has jurisdiction.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 21, 2008 is affirmed.

Issued: May 12, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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