United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 10-1513**
	)	**Issued: February 22, 2011**
U.S. POSTAL SERVICE, POST OFFICE, El Paso, TX, Employer	)	

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 May 14, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 25, 2010 merit decision denying his claim and an April 22, 2010 decision denying his request for reconsideration. 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 met his burden of proof to establish that he sustained an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration without a merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 18, 2009 appellant, then a 49-year old clerk, filed an occupational disease claim alleging that he had numbness and tingling in his hands. He noted performing repetitive sorting of letters, flats and parcels at work. Appellant stated that his physician performed testing

that showed left cubital and left carpal tunnel syndrome as well as nerve entrapment at C5-6. He was first aware of his condition and its relationship to his federal employment on July 9, 2009. Appellant received medical treatment on July 9, 2009 and returned to modified duty on July 11, 2009. The employing establishment questioned whether appellant's condition was related to a prior May 19, 2009 claim or to a military injury sustained in 1990 and 1991.[1]

In a December 17, 2009 letter, the Office informed appellant that additional evidence was needed to establish his claim. It gave him 30 days to submit medical reports describing symptoms, results of examinations and tests, diagnosis and treatment provided and offering a physician's reasoned opinion as to how his work activity incident caused his condition.

In a January 12, 2010 statement, appellant detailed his employment duties and asserted that he previously submitted a medical report with electromyogram (EMG) results. He advised that he performed no repetitive activities outside of work.

By decision dated February 25, 2010, the Office denied appellant's claim. It found that, while the claimed work activities were performed there was no medical evidence supporting that the work activities caused a diagnosed medical condition.

Appellant requested reconsideration on March 10, 2010 and stated that he would forward new medical documentation.

By decision dated April 22, 2010, the Office denied his reconsideration request finding appellant's letter was insufficient to warrant a merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his 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 disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[5] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying

[1] No other Office claims are before the Board in the present appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See S.P.*, 59 ECAB 184, 188 (2007).

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 evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[7]

ANALYSIS -- ISSUE 1

The evidence supports that appellant sorted mail, parcels and flats as a mail clerk. However, appellant did not submit any medical evidence to establish the existence of his left cubital and carpal tunnel syndrome and cervical condition or that any of these conditions were causally related to his work activity.

The Office advised appellant of the medical evidence needed to establish his claim in a December 17, 2009 letter. Appellant did not furnish a physician's report and the Office denied his claim on February 25, 2010. As no medical evidence was offered to show that federal employment activity caused or aggravated a diagnosed condition, he failed to establish his *prima facie* claim for compensation.[8]

Appellant's burden of proof includes the submission of rationalized medical evidence that addresses how the employment factors caused or aggravated a diagnosed medical condition. As he did not submit any medical evidence with his claim, he did not meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[9] the Office's regulations provide that the evidence or argument submitted by a claimant must either: (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.[10] Where the

[6] *See R.R.*, 60 ECAB ___ n.12 (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[7] *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 3 at 352.

[8] *See Donald W. Wenzel*, 56 ECAB 390 (2005).

[9] 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

[10] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[11]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on March 10, 2010 and stated that he would forward medical documentation. This assertion did not contend that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.[12] Appellant argued on appeal that he timely submitted new and pertinent medical evidence, but the record indicates that no evidence was received by the Office before issuance of the April 22, 2010 nonmerit decision. As he did not submit evidence or argument satisfying one of the three regulatory criteria for reopening a claim for a merit review, the Office properly denied his application for reconsideration without reopening the claim for a review on the merits.

On appeal, appellant asserted that he submitted medical evidence to the Office. He also submitted additional evidence on appeal. The Board notes that the record on appeal contains no medical evidence submitted to the Office prior to either the February 10 or April 22, 2010 decisions. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Consequently, the new evidence submitted cannot be considered by the Board for the first time on appeal.[13]

CONCLUSION

The Board finds that appellant failed to establish that he sustained an occupational disease in the performance of duty. The Office properly refused to reopen the claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[11] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

[12] *See Charles A. Jackson*, 53 ECAB n.14 671 (2002); *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

[13] *See* 20 C.F.R. § 501.2(c). Appellant, however, may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the February 25 and April 22, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 22, 2011
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