U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. SCOTT and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 99-922; Submitted on the Record;
Issued June 23, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden that she sustained an injury in the performance of duty on May 20, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On May 20, 1998 appellant, then a 35-year-old mail carrier, filed a claim alleging that on that same day she sustained a right shoulder strain while casing and delivering mail. Appellant did not stop work as a result of this injury.

In support of her claim, appellant submitted a duty status report dated May 20, 1998, a Lutheran Medical Center work ability report dated May 20, 1998 and a note from Dr. Joseph Novinger, an osteopath. The duty status report indicated appellant should be placed on light duty. The work ability report indicated a diagnosis of right shoulder strain and bursitis. Dr. Novinger indicated in his note that appellant could return to full duty on May 27, 1998.

In a letter dated June 8, 1998, the Office requested additional factual and medical information surrounding the alleged injury.

Appellant submitted a June 18, 1998 attending physician's report signed by Dr. Novinger as well as a response to the Office's questionnaire. The attending physician's report diagnosed bursitis of the shoulder at the myofascial trigger point. Dr. Novinger indicated with a checkmark "yes" with a notation of "possible-likely" that appellant's condition was caused or aggravated by an employment activity. The report did not note appellant's history of injury or the cause of the condition. In response to the questionnaire, appellant stated that she felt a pain in her right shoulder while casing and delivering mail. Appellant indicated that she notified her supervisors and received medical treatment on the date of the alleged incident and was continuing to have pain and discomfort in the shoulders.

In a decision dated July 17, 1998, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that she sustained an injury on May 20, 1998 as required by the Federal Employees' Compensation Act.[1] The Office noted appellant did not describe the mechanics on how the injury occurred and the medical evidence did not provide a history of the work incident. Additionally, the Office found that there was no medical evidence submitted, which indicated that the diagnosed condition of bursitis of the shoulder was in any way related to the alleged employment factor of carrying and delivering mail.

By letter dated October 24, 1998, appellant requested an oral hearing before an Office hearing representative. Appellant did not submit any additional factual or medical evidence.

By decision dated December 10, 1998, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reasons that the issues of the case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

The Board finds that appellant has failed to establish that she sustained a right shoulder strain in the performance of duty on May 20, 1998 as alleged.

An employee seeking benefits under the 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 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish

[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Id.*

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton*, *supra* note 1.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8]

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 identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

The Board finds that appellant was casing and delivering mail on May 20, 1998 as alleged. However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. The only medical report supporting a causal relationship between appellant's employment and her diagnosed condition is Dr. Novinger's report dated June 18, 1998, which diagnosed appellant with bursitis of the shoulder at the myofascial trigger point and indicated with a checkmark "yes" with a notation that it was "possible - likely" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical report form question on whether the claimant's condition was related to the history given is of little probative value. Even though Dr. Novinger noted that it was "possible – likely" that appellant's condition was caused or aggravated by an employment activity, without any further explanation or rationale for the conclusion reached, such report is insufficient to establish a causal relationship.[10] Instead, Dr. Novinger couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.[11] Therefore, this report is insufficient to meet appellant's burden of proof.

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[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255-56.

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[11] *See Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an

The remainder of the medical evidence fails to provide a specific opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act,[12] concerning a claimant's entitlement to a hearing before an Office hearing representative, states:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[13]

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[14] Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.[15]

In the instant case, the Office properly determined appellant's October 24, 1998 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's July 17, 1998 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

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incomplete history or which are speculative or equivocal in character have little probative value.)

[12] 5 U.S.C. §§ 8101-8193.

[13] 5 U.S.C. § 8124(b)(1).

[14] *Tammy J. Kenow*, 44 ECAB 619 (1993).

[15] *Id.*

The December 10 and July 17, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 23, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member