U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of COLLEEN LANGLOIS and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

Docket No. 99-2462; Submitted on the Record;
Issued November 27, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a shoulder injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant a review of the written record based on its finding that her request was not timely filed.

On January 5, 1999 appellant, then a 38-year-old mail processor filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that she developed pain in her right shoulder due to working on a bar code reader, which she used in the course of her federal employment.[1] On the reverse of the form, her supervisor noted that appellant had not stopped working.

By letter dated January 8, 1999, the Office advised appellant that the information submitted in her claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.[2] The Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was directed to provide a reasoned medical opinion, including a discussion by appellant's physician as to the causal relationship between appellant's claimed injury and specific employment factors.

In response to the Office's letter, appellant forwarded medical reports dated January 18 and 28, and February 16, 1999, signed by Ian F. M. Buchan, PA-C, a physician's assistant, who stated that appellant was suffering from an impingement syndrome of the right shoulder, which he attributed to employment factors. Mr. Buchan also noted that appellant would be referred for physical therapy and noted appellant's work restrictions. Additionally, appellant forwarded

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[1] Appellant previously filed a 1996 claim for right shoulder strain with the Office, which was adjudicated under File No. 01-0361890 and accepted as work related.

[2] 5 U.S.C. §§ 8101-8103.

physical therapy notes dated January 22 and February 1, 1999, signed by Theresa Freeman; and January 25 and 26, 1999, signed by Rosemarie Lee.

In a decision dated March 20, 1999, the Office rejected appellant's claim because appellant had failed to provide competent medical opinion evidence in support of her claim. The Office explained that neither a physician's assistant nor a physical therapist is considered to be a physician under the provisions of the Act, and is not competent to render a medical opinion.[3] Consequently, the reports by Mr. Buchan, Ms. Freeman and Ms. Lee have no probative value. Therefore, the Office found that the medical evidence was insufficient to establish that appellant's shoulder condition was caused by employment factors.

In an April 19, 1999 letter, postmarked on April 20, 1999, appellant requested review of the written record and submitted copies of previously filed reports.

By letter decision dated May 14, 1999, the Office denied appellant's request for review of the written record. The Office determined that appellant's request was untimely filed and that the matter could be further pursued through the reconsideration process.[4]

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury to her right shoulder, causally related to her federal employment.

An employee seeking benefits under the Act has the burden of establishing that 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 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.[5] 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.[6]

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 claimant.

[3] *See* 5 U.S.C. § 8101(2).

[4] The Board notes that on August 13, 1999, the Office received appellant's request for reconsideration. The Board and the Office may not have concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings,* 41 ECAB 880 (1990).

[5] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[6] *David J. Overfield,* 42 ECAB 718 (1991); *Victor J. Woodhams,* 41 ECAB 345 (1989).

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion 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 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.[7]

As noted above, part of the burden of proof includes the submission of rationalized medical evidence establishing that the claimed condition is causally related to employment factors.

In this case, the reports from the physician's assistant and the physical therapists are not considered to be probative medical evidence under the Act.[8] Appellant argues on appeal that the physician's assistant and physical therapist consult with a physician, Dr. Alan Bean, regularly about her injury and thus their reports substantiate her case. She was informed in the March 20, 1999 decision that medical reports must be signed by a qualified physician. As appellant has not submitted the requisite medical evidence, she has not met her burden of proof in establishing her claim.

The Board further finds that the Office did not abuse its discretion in denying appellant's untimely request for a review of the written record.

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office's final decision. The Office's regulations expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office provided that such review of the written record is also subject to the same requirement that the request must be made within 30 days of the Office's final decision.[9]

In this case, the Office denied appellant's request for a review of the written record on the grounds that her April 20, 1999 request was not made within 30 days of the Office's March 20, 1999 decision. The Board finds that the Office properly determined that appellant's request for a review was postmarked 31 days after the issuance of the March 20, 1999 decision.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary

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[7] *Id.*

[8] *See Sheila A. Johnson,* 46 ECAB 323 (1994); *Sheila Arbour (Victor E. Arbour),* 43 ECAB 779 (1992); *Barbara J. Williams,* 40 ECAB 649 (1989) (physician's assistants and physical therapists are not competent to render medical opinions).

[9] 20 C.F.R. § 10.616(b) (1999); *Michael J. Welsh,* 40 ECAB 994 (1989).

authority in deciding whether to grant a hearing.[10] The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[11]

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its May 14, 1999 decision, properly exercised its discretion by stating that it had considered that matter in relation to the issue involved and had denied appellant's request for a review of the written record on the basis that the issue of causal relationship could be addressed through a reconsideration application.

The decisions of the Office of Workers' Compensation Programs dated May 14 and March 20, 1999 are hereby affirmed.

Dated, Washington, DC
November 27, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

[10] *Henry Moreno,* 39 ECAB 475, 482 (1988).

[11] *See Michael J. Welsh supra* note 9 at 996-97.