

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN L. BROWN and U.S. POSTAL SERVICE,
CARL RANGE STATION, Irving, TX

*Docket No. 02-479; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her neck and shoulder condition was caused by factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review.

On April 25, 2001 appellant, then a 40-year-old customer service supervisor, filed a notice of occupational disease alleging that her federal employment duties caused her neck and shoulder pain. Appellant stated that her pain was caused by keying mail repetitiously and by working on the computer.

By letter dated May 30, 2001, the Office informed appellant that additional evidence was needed to process her claim. Appellant responded on June 5, 2001 and described the employment-related activities that she believed contributed to her condition, including repetitious keying, continuous lifting of heavy bundles and parcels, pushing, pulling and other strenuous physical movements on a repeated basis. She indicated that she first noticed pain in her neck and shoulders in 1996 and that her fingers started to go numb in 1999.

By decision dated July 30, 2001, the Office denied appellant's claim for compensation since there was no medical evidence to establish that appellant's condition was caused by her employment.

By letter dated October 1, 2001, appellant requested reconsideration and stated that her physician would forward medical evidence to the Office. By decision dated November 5, 2001, the Office denied appellant's request for reconsideration having received no medical evidence.

The Board finds that appellant has failed to meet her burden of proof to establish that her neck and shoulder condition was caused by factors of her federal employment.

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 the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant did submit factual evidence identifying employment factors which she believed caused her condition, yet she did not submit any medical evidence establishing a diagnosis concerning her neck or shoulder, or establishing a causal relationship between employment factors and her condition. At the time the Office denied appellant's claim on July 30, 2001, the record did not contain any medical evidence. Thus, the Board finds the evidence submitted by appellant is insufficient to meet her burden of proof that her alleged condition was caused by employment factors. It is appellant's burden of proof to submit probative medical evidence and she has not done so in this case.²

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

Section 10.606 of the regulations provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of her request, appellant submitted an October 1, 2001 statement stating that medical evidence from her physician would be forthcoming. She did not submit any new evidence or contend that the Office erroneously applied or interpreted a specific point of law. Appellant also did not raise any legal arguments not previously considered by the Office. When

¹ *Haydee Martinez*, Docket No. 01-0833 (issued October 29, 2001).

² With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.608(a).

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.⁵

The November 5 and July 30, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.608(b).