

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRIS R. MANANSALA and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

Docket No. 02-536; Submitted on the Record;
Issued June 26, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right shoulder or neck injury in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On May 31, 2001 appellant, then a 31-year-old mail processor, filed an occupational injury claim alleging that she sustained right shoulder and neck conditions due to her job duties which required repetitive motion of her upper extremities and neck.¹ She indicated that she performed such tasks as sorting mail, lifting trays of mail and pushing heavy carts. By decision dated August 27, 2001, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a right shoulder or neck injury in the performance of duty. By decision dated November 26, 2001, the Office denied appellant's request for merit review.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right shoulder or neck injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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

¹ Appellant noted that she first became aware of her condition in January 2001; she did not stop working for the employing establishment.

² 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.⁵

Appellant did not submit sufficient medical evidence to establish that she sustained a right shoulder or neck injury in the performance of duty. She submitted several medical reports, dated between early and mid 2001, which discussed her neck, right shoulder, wrist and back problems. These reports, however, are of limited probative value regarding whether appellant sustained an employment-related injury in that they do not contain an opinion on causal relationship.⁶ Appellant also submitted several reports of an attending chiropractor. These reports would not have probative value on the relevant issue of the present case because they do not constitute medical evidence within the meaning of the Act.⁷ Appellant did not submit a rationalized medical report relating her claimed condition to employment factors.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). Some of the reports make note of appellant's reported work duties, but they do not indicate that these duties caused or aggravated any condition.

⁷ Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8107(a). The reports do not contain a finding of spinal subluxations as demonstrated by x-rays to exist.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of Act, the Office's regulations provide that a claimant must: (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) submit relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ When 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.¹⁰

In a letter dated September 4, 2001, appellant requested reconsideration of her claim. In this letter and several others, appellant indicated that she would be submitting additional medical evidence in support of her claim.¹¹ She also submitted another statement regarding the nature of her work duties. However, this evidence and argument is not relevant to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that she sustained a right shoulder or neck injury in the performance of duty. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

In the present case, appellant has not established that the Office abused its discretion in its November 26, 2001 decision by denying her request for a review on the merits of its August 27, 2001 decision under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ Appellant did not submit any medical evidence in support of his reconsideration request.

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The November 26 and August 27, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member