

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDY AVENIDO and U.S. POSTAL SERVICE,
POST OFFICE, Moraga, CA

*Docket No. 03-1338; Submitted on the Record;
Issued July 14, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a left shoulder injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 28, 2003 request for an oral hearing before an Office hearing representative.

On October 15, 2002 appellant, then a 57-year-old distribution/window clerk, filed an occupational disease claim alleging that his left shoulder condition was a result of his federal employment, the duties of which he described. On October 28, 2002 the Office requested additional information, including the following:

“Provide a comprehensive medical report from your treating physician, which describes your symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the doctor's opinion, with medical reasons, on the cause of your condition. Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided.

“Please note: *This evidence is crucial to the consideration of your claim. You may wish to provide your treating physician with a copy of this letter.*”
(Emphasis in the original.)

Appellant submitted medical documents relating to his complaints, findings, diagnosis of left shoulder impingement/tendinitis, treatment, work status and physical restrictions.

In a decision dated December 16, 2002, the Office denied appellant's claim for failure to establish the element of causal relationship. Although the medical reports indicated that he suffered from tendinitis of the left shoulder, the medical evidence did not show that his left shoulder condition was causally related to his duties at work. The Office stated: “Your physician did not explain if and how your diagnosed condition was caused o[r] [a]ffected by the claimed factors of employment.”

An attached statement of appeal rights notified appellant that any request for an oral hearing must be postmarked within 30 days of the date of the decision. In a letter dated January 28, 2003, appellant requested a hearing. On January 30, 2003 he clarified that he was requesting an oral hearing.

In a decision dated March 11, 2003, the Office denied appellant's request for an oral hearing before an Office hearing representative because his request was untimely and because he could equally well address the issue in his case by requesting reconsideration from the district Office and submitting evidence not previously considered.

The Board finds that the medical evidence fails to establish that appellant sustained a left shoulder injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Appellant attributed his left shoulder condition to the duties he performed as a distribution/window clerk. The duties themselves are not in dispute. He has submitted sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether these duties caused his left shoulder condition.

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

Appellant has submitted no such evidence. On October 28, 2002 the Office requested that he submit a comprehensive report from his treating physician containing, among other things, the physician's opinion, with medical reasons, on the cause of the diagnosed condition. The Office emphasized that this reasoned medical opinion was crucial to the consideration of his claim. Appellant submitted medical evidence supporting a diagnosis of left shoulder impingement/tendinitis, but he submitted no opinion from his treating physician explaining how the duties appellant performed as a distribution/window clerk caused or contributed to this condition.

Because appellant has submitted no medical opinion evidence to support the critical element of causal relationship, he has not met his burden of proof. The Board will affirm the Office's December 16, 2002 decision.

The Board also finds that the Office properly denied appellant's January 28, 2003 request for an oral hearing before an Office hearing representative.

Section 8124(b)(1) of the Act provides:

"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 section 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."⁷

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁸ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹⁰

Because appellant made his January 28, 2003 request for a hearing more than 30 days after the Office's December 16, 2002 decision, he is not entitled to a hearing as a matter of right. The Office considered appellant's request and correctly advised him that he could equally well address the issue in his case through the reconsideration process. Under these circumstances, the Board finds that the Office properly denied a discretionary hearing on the matter.¹¹ The Board will affirm the Office's March 11, 2003 decision.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. § 10.616(a) (1999).

⁹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁰ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹¹ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. E.g., *Jeff Micono*, 39 ECAB 617 (1988).

The March 11, 2003 and December 16, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 14, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member