

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**LINDA L. FRAZIER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Ashville, NC, Employer**

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**Docket No. 04-305  
Issued: April 2, 2004**

*Appearances:*  
*Linda L. Frazier, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On October 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated September 18, 2003, which declined to reopen her claim for consideration of the merits and August 19, 2003, a merit decision denying her claim, as she failed to establish an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on June 13, 2003; and (2) whether the Office properly declined to reopen appellant's claim for consideration of the merits.

## **FACTUAL HISTORY**

On June 13, 2003 appellant, then a 45-year-old clerk, filed a notice of traumatic injury alleging that on that date she injured her left hand, “continuously grasping and handling mail for long periods of time.” On the reverse of the form her supervisor stated that her injury “did not occur over the course of a workday, not a traumatic injury.”

In a letter dated July 11, 2003, the Office requested additional factual and medical evidence and allowed appellant 30 days to submit the same. She did not respond to the Office’s request for information.

By decision dated August 19, 2003, the Office denied appellant’s claim finding that she had not established that the events occurred as alleged and furthermore, that there was no medical evidence providing a diagnosis which could be connected to the claimed events.

Appellant indicated that she wished the Office to reconsider her claim with a checkmark on a form dated September 8, 2003. She did not submit any evidence or argument in support of her reconsideration request. By decision dated September 18, 2003, the Office declined to reopen appellant’s claim for consideration of the merits.<sup>1</sup>

## **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> On appeal to the Board appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant alleged that she developed a left hand condition due to her employment duties of "continuously grasping and handling mail for long periods of time" on June 13, 2003. Although appellant's supervisor suggested that the claim might properly be developed as an occupational disease claim rather than a traumatic injury, given the absence of any factual evidence beyond that which was written on the notice of traumatic injury, the Office properly considered the claim as filed by appellant. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>6</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish 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 her subsequent course of action.<sup>7</sup> 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.<sup>8</sup> Appellant has submitted only a singular uncontroverted statement on her claim form describing her employment duties on June 13, 2003. Her supervisor did not dispute that grasping and handling mail was required by her position description. Furthermore, appellant's supervisor's assessment that the claim should be developed as an occupational disease is insufficient to discount appellant's statement that her alleged employment injury occurred as a result of her duties on June 13, 2003, a single day. Therefore, the Board finds that appellant has established this element of her claim.

However, as found by the Office, appellant did not submit any medical evidence establishing that she sustained any injury as a result of the accepted employment duties. Thus, the second component, whether the employment incident caused a personal injury, can generally 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.<sup>9</sup> As there is no medical evidence in the record establishing an injury as a result of employment duties on June 13, 2003 appellant has failed to meet her burden of proof and the Office properly denied her claim.

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<sup>4</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 2.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>8</sup> *Id.* at 255-56.

<sup>9</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

**LEGAL PRECEDENT -- ISSUE 2**

The Office's regulation provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>10</sup>

**ANALYSIS -- ISSUE 2**

The Office issued its merit decision on August 19, 2003 and denied appellant's claim, finding that she had not submitted sufficient evidence to establish either the factual or the medical aspects of her claim. Appellant requested reconsideration on September 8, 2003, but did not submit any additional evidence or argument in support of her request. In accordance with the applicable regulation, the Office must reopen a claim for consideration of the merits only if the reconsideration request contains either new evidence or new legal argument. As appellant did not submit any evidence or argument in support of her request for reconsideration, the Office properly declined to reopen her claim for consideration of the merits.

**CONCLUSION**

The Board finds that appellant was performing the tasks as described in her claim and that the Office properly denied her claim as she failed to submit any medical evidence establishing that she sustained an injury as a result of her June 13, 2003 employment duties. The Board further finds that the Office properly refused to reopen appellant's claim for consideration of the merits on September 18, 2003 as she did not submit any evidence or legal argument in support of her request for reconsideration.

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<sup>10</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18 and August 19, 2003 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: April 2, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member