

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

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**PHILLIP D. DOZIER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Redmond, WA, Employer**

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**Docket No. 04-460  
Issued: April 9, 2004**

*Appearances:*

*Ken Stevens, for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On December 11, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' decision dated January 22, 2003, which denied his injury claim. On May 30, 2003 the Office denied appellant's request for reconsideration without reaching the merits of his case. As the most recent merit decision in this case, that dated January 22, 2003, was filed within one year, the Board has jurisdiction over the merits of the case, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issues on appeal are: (1) whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On October 24, 2002 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that he developed right shoulder pain in the performance of duty. He indicated that he first became aware of the injury and its relation to his work on December 1, 2001. Appellant did not stop work.

In a letter dated November 5, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that he submit additional supportive factual and medical evidence. A copy of the letter was also provided to the employing establishment.

The employing establishment provided a copy of an October 21, 1985 preplacement medical screening report, prepared by Dr. Kevin M. O' Keefe, a Board-certified anesthesiologist, a physical fitness form indicating that appellant was certified to drive and a December 18, 2002 form report in which Dr. David Kim, Board-certified in physical medicine and rehabilitation, diagnosed right shoulder impingement due to repetitive motion and indicated by circling a "yes" that the diagnosed condition was probably caused by a December 19, 2001 injury and indicated that it would not cause appellant to miss work.

By decision dated January 22, 2003, the Office denied appellant's claim, noting that he did not respond to the November 5, 2002 development letter.

The Office subsequently received a December 23, 2002 report from Dr. Michael E. Morris, a Board-certified orthopedic surgeon, in which he diagnosed impingement syndrome, treatment notes from Dr. Kim dating from March 29 to September 18, 2002 and a position description.

In an undated request for reconsideration received by the Office on May 12, 2003, appellant stated that his injury did not occur on a specific date. He explained that he only used the date he started treatment as an approximate date and that he had been "carrying mail since Sept[ember] 1985." Appellant indicated that the damage to his shoulder resulted from 18 years of service at the employing establishment.

By decision dated May 30, 2003, the Office denied appellant's request for reconsideration.

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

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>1</sup>

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions are sufficient to establish causal relation.<sup>2</sup>

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

In this case, appellant did not submit any factual information to establish that he was injured in the course of his federal employment. He alleged that he had developed a right shoulder condition, but did not explain how this occurred. By letter dated November 5, 2002, the Office requested that appellant submit both factual and medical evidence to establish that his employment duties resulted in an injury; however, appellant did not specifically identify any employment factors that allegedly caused or contributed to his claimed condition. Further, while the December 18, 2002 report of Dr. Kim contained a diagnosis of right shoulder impingement due to repetitive motion, Dr. Kim merely circled a “yes,” indicating that the condition was caused by a December 19, 2001 injury. When a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.<sup>3</sup> Dr. Kim provided no further explanation or description of this injury. His report is, therefore, of insufficient probative value to meet appellant’s burden. The additional medical evidence does not address a right shoulder condition. Consequently, there is insufficient factual and medical evidence in the record to establish entitlement to benefits. As the record contains no factual or medical evidence to support the instant claim, appellant failed to establish that he sustained an injury in the performance of duty.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) provides that, when a request for reconsideration is

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<sup>1</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>2</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>5</sup> 20 C.F.R. § 10.606(b)(1)-(2).

timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

Appellant provided an undated request for reconsideration, in which he indicated that his condition resulted from 18 years of repetitive motion. He did not provide any new details as to how his shoulder condition resulted from his employment duties. Appellant also provided a copy of his job description and a December 23, 2002 medical report from Dr. Morris containing a diagnosis of impingement syndrome and treatment notes from Dr. Kim. However, these reports were not relevant as they did not contain any opinion that would support that appellant's condition was due to his employment. Thus, he has failed to show that the Office erred in interpreting the law and regulation and has not advanced any relevant legal argument not previously considered by the Office. Furthermore, he did not submit relevant and pertinent new medical evidence. Inasmuch as appellant failed to meet any of the three requirements for reopening his claim for merit review, the Office properly denied his reconsideration request.<sup>7</sup>

### **CONCLUSION**

Under the circumstances described above, the Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's claim for merit review.<sup>8</sup>

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<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> *Id.*

<sup>8</sup> On appeal appellant submitted additional evidence to support his claim. The Board's jurisdiction, however, is limited to reviewing the evidence that was before the Office at the time of its final decision. The Board, therefore, has no jurisdiction to review any evidence submitted to the record after the Office's May 30, 2003 decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 30 and January 22, 2003 be affirmed.

Issued: April 9, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member