

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

TERRY D. HUFF, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Beverly Hills, CA, Employer**

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**Docket No. 04-686
Issued: June 3, 2004**

Appearances:
Terry D. Huff, 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
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 16, 2004 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated April 18, June 9 and October 16, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this claim.

ISSUES

The issues are: (1) whether appellant established that she sustained an injury causally related to factors of employment; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a) in its June 9 and October 16, 2003 decisions.

FACTUAL HISTORY

On October 21, 2002 appellant, then 46-year-old letter carrier, filed a claim for a recurrence of disability, due to the February 1, 2001 employment injury, commencing in

October 2002.¹ She stated that, when she returned to work after the original injury, she was limited to lifting, pushing and pulling heavy objects. Appellant described tingling sensation and numbness in the right hand, intermittent pain in the right shoulder, loss of strength in the right wrist and hand accompanied by pain and pain in the lower back, right leg and swelling in the ankle. She stated that the repetitive motion of reaching with her right arm and shoulder, carrying the mailbag for over 20 years and pushing the loaded mail cart caused her recurrence of disability.

By letter dated January 27, 2003, the Office informed appellant that the injury, as described in her CA-2 form was that of an occupational disease, not a recurrence of disability and her claim would, therefore, be treated as one for an occupational disease. The Office requested that she submit additional evidence, including a medical report from her treating physician describing the connection between her diagnosed condition and her federal employment. In a report dated [month and date illegible], 2002, appellant's treating physician, Dr. Phillip J. Kanter, a Board-certified orthopedic surgeon, diagnosed a lumbosacral strain and right shoulder sprain, superimposed upon prior rotator cuff repair. He prescribed light duty with no lifting over 25 pounds and no pushing, pulling or carrying. In an attending physician's report dated March 28, 2003, Dr. Kanter diagnosed status post right shoulder cuff repair 1998, with recent increased symptoms and lumbosacral syndrome with sciatica and recent exacerbation. He checked the "yes" box that appellant's condition was related to her employment and stated that she was unable to carry more than 10 pounds.

On April 2, 2003 appellant stated that at her job she repetitively reached above her head casing or aligning mail and continuously performed bending, lifting, pushing and pulling. She stated that outside of work she is a mother and did cooking and cleaning and recreational activity like going to the movies and walking.

By decision dated April 18, 2003, the Office denied appellant's claim, stating that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

By letter dated May 9, 2003, appellant requested reconsideration of the Office's decision. She reiterated that her shoulder had become increasingly "painful and aggravated" due to the repetitive motion of reaching above her head. Appellant stated that she had tingling in her hand and arm and her entire arm and wrists were in pain and weak. She referred to her prior back and shoulder injuries, stated that she underwent surgery on her shoulder in 1998 and she still had to "a lot of" bending, lifting and pushing on her job. Appellant stated that she recently requested light duty, but her supervisor and postmaster "gave notice" back to her telling her that her documentation "said nothing about not carrying."

In a report dated April 28, 2003, Dr. Kanter stated that appellant had sustained work-related conditions or rotator cuff tear and lumbosacral syndrome with sciatica. He stated that her lower back symptomatology began following an accident at work on November 21, 2001 and the

¹ The Office accepted appellant's claims for a rotator cuff tear occurring on August 26, 1997, No. 13-1152618 and a lumbar strain occurring on November 21, 2001, No. 13-2043091. The Office noted that appellant was in an automobile accident on February 1, 2001.

pain was aggravated by standing, bending and lifting and that going up and down stairs or squatting caused pain. Dr. Kanter stated that cold and damp weather aggravated the condition and driving long distance resulted in pain. He stated that, regarding the right shoulder, appellant was under his care since 1997 and in 1998 she underwent surgical intervention to repair a rotator cuff tear. Dr. Kanter stated that appellant could not do any heavy lifting, pulling or pushing with her right upper extremity. He stated that “[i]t is definitely felt to be a result of her job duties.”

A bone scan dated May 20, 2003 showed mild increased activity in the right wrist, consistent with degenerative changes. An electrodiagnostic study dated May 23, 2003 showed findings consistent with bilateral carpal tunnel syndrome, more severe on the right.

In an attending physician’s report dated May 28, 2003, Dr. Kanter diagnosed status post right rotator cuff tear and repair in 1998, with recent symptoms and lumbosacral syndrome with sciatica. He stated that appellant was temporarily totally disabled.

In a nonmerit decision dated June 9, 2003, the Office denied appellant’s request for reconsideration.

In an undated letter received by the Office on August 18, 2003, appellant requested reconsideration of the Office’s decision. She stated that she faxed the medical test results to the Office before her doctor had an opportunity to see them and give his opinion on the results of the test on the premise that the evidence would convince the Office to accept her claim. Appellant stated that she brought in proper documentation from her doctor requesting light duty while she was working and the request was denied. She stated that she then continued working until her injuries became exceptionally aggravated and painful each day.

In a nonmerit decision dated October 16, 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, the claimant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 causal relationship, generally, is rationalized medical 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.²

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 the claimant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.³

ANALYSIS -- ISSUE 1

The medical evidence appellant submitted to support her occupational claim consisted of Dr. Kanter's note in 2002, in which he diagnosed a lumbosacral strain and right shoulder sprain superimposed upon prior rotator cuff repair and his March 28, 2003 attending physician's report. In his report, Dr. Kanter diagnosed, in part, status post right shoulder cuff repair 1998 with recent increased symptoms and checked the "yes" box that appellant's condition was work related. His 2002 note does not address causation and is, therefore, of diminished probative value.⁴ Dr. Kanter checking the "yes" box in his March 28, 2003 report, absent a medical rationale explaining how appellant's condition was causally related to her November 21, 2001 shoulder injury, is insufficient to establish the requisite causal connection between her current condition and her employment.⁵ The medical evidence was, therefore, insufficient to establish her occupational claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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.⁶ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁷

² See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985)

⁴ See *Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000).

⁵ *Calvin E. King*, 51 ECAB 394, 401 (2000).

⁶ Section 10.606(b)(2)(i-iii).

⁷ Section 10.608(a).

ANALYSIS -- ISSUE 2

In her May 9, 2003 request for reconsideration, appellant described the increased symptoms of pain in her shoulder, hand, arms and wrist from performing her usual work of repetitive reaching above her head. Her letter requesting reconsideration did not contain any new legal arguments or show that the Office had misinterpreted the law. In his April 28, 2003 report, Dr. Kanter explained that standing, bending, lifting and bad weather aggravated appellant's condition and driving long distance caused her pain. He stated that her condition was the result of her job duties, but he did not specifically address the factors of employment which caused appellant's condition or explain how they caused her condition. Dr. Kanter did not address causation in his May 28, 2003 report. The May 20, 2003 bone scan and May 23, 2003 electrodiagnostic study also do not address causation. The evidence appellant submitted is not pertinent because it does not address the requisite causal relationship between her condition and the factors of employment. The Office, therefore, properly denied appellant's request for reconsideration.

In her request for reconsideration received by the Office on August 18, 2003, appellant explained that she had not submitted the diagnostic tests to her doctor for review prior to submitting them to the Office in order to promote a favorable decision in her case. She also emphasized that she had submitted the proper medical documentation, indicating that she required light-duty work to her supervisor but the request was denied. Appellant did not present any new legal arguments or show that the Office misinterpreted the law. She also did not submit any pertinent new evidence.

CONCLUSION

The Board finds that appellant failed to establish her medical condition was causally related to factors of her federal employment and, therefore, she did not establish that she sustained an occupational disease. Further, in her requests for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument; or present relevant and pertinent new evidence not previously considered by the Office. The Board finds that the Office properly denied appellant's requests for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 16, June 9 and April 18, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member