

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

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<b>ALBERTO MUNOZ, Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 04-620</b>
	)	<b>Issued: May 11, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, El Paso, TX, Employer</b>	)	
	)	
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*Appearances:*  
*Alberto Munoz, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On January 7, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 8, 2003 which found that appellant failed to establish fact of injury and a decision dated October 24, 2003 which denied appellant's request for an oral hearing before an Office hearing representative as untimely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof in establishing that his right shoulder and left foot conditions were sustained in the performance of duty as alleged; and (2) whether the Office properly denied his request for an oral hearing as being filed untimely.

**FACTUAL HISTORY**

On March 25, 2003 appellant, a 51-year-old mail carrier, filed an occupational disease claim alleging that his right shoulder condition and left foot heel spur were due to his carrying mail for the past 15 years. On the reverse of the form, appellant's supervisor noted that appellant did not submit any medical information and did not stop working.

In an April 1, 2003 letter, the Office advised appellant that the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.<sup>1</sup> The Office requested certain factual and medical information. In particular, appellant was directed to provide a comprehensive medical report and a physician's opinion, with medical reasons for such opinion, as to how appellant's work caused or aggravated the claimed injury. No response was received from appellant.

In an undated narrative appellant's supervisor, Vincent E. McDaniels, supervisor customer service, stated that he could not confirm that appellant sustained the injuries alleged or "what is stated on his CA-1 and statement to be true." Mr. McDaniels stated that appellant failed to report that he felt a pain in his right shoulder on February 15, 2003 while picking up mail.

By decision dated May 8, 2003, the Office denied appellant's claim. The Office found that he failed to provide any medical evidence with his claim to establish that the medical conditions alleged were caused by the employment factor he had identified.

Appellant requested a hearing by submitting an undated form which was received by the Office on September 24, 2003. An attached envelope contains a postmark date of August 22, 2003. With his request for a hearing appellant submitted a magnetic resonance imaging report of his right shoulder dated March 5, 2003 by Dr. James H. Algeo, Jr., Board-certified in internal medicine, nuclear medicine and diagnostic radiology, and an April 9, 2003 report by Dr. Richard S. Westbrook, an attending Board-certified orthopedic surgeon.

By decision dated October 24, 2003, the Office denied appellant's request for a hearing as being untimely filed. The Office further found that the issues in the case could equally well be addressed by requesting reconsideration from the district Office and by submitting evidence not previously considered which established that appellant sustained an injury in the performance of duty as alleged.

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

An employee seeking benefits under the Act has the burden of establishing that the essential elements of his or 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 compensation is claimed are causally related to the employment injury.<sup>2</sup> These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Derrick C. Miller*, 54 ECAB \_\_\_\_ (Docket No. 02-140, issued December 23, 2002).

<sup>3</sup> *Janice Guillemette*, 54 ECAB \_\_\_\_ (Docket No. 03-1124, issued August 25, 2003); *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

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;<sup>4</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> 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.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>7</sup>

The medical evidence required to establish causal relationship generally 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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> 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>11</sup>

### ANALYSIS -- ISSUE 1

In the case at hand, appellant attributed his right shoulder and left foot heel spur to carrying mail for the past 15 years. As noted above, as part of appellant's burden of proof he must submit rationalized medical evidence explaining the relationship between the diagnosed condition and employment factors identified by appellant who failed to submit any rationalized medical evidence. The Office properly determined that appellant failed to carry his burden of proof in establishing that he developed a right shoulder condition and left foot heel spur causally related to employment factors, because he failed to submit any medical evidence diagnosing a

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<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>5</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB \_\_\_\_ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB 468 (2001).

<sup>6</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *Luis M. Villanueva*, 54 ECAB \_\_\_\_ (Docket No. 03-977, issued July 1, 2003).

<sup>8</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>9</sup> *Tomas Martinez*, 54 ECAB \_\_\_\_ (Docket No. 03-396, issued June 16, 2003).

<sup>10</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB \_\_\_\_ (Docket No. 03-565, issued July 9, 2003).

medical condition. Accordingly, he has not met his burden of proof to establish that he sustained an employment-related injury in this case.

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

Section 8124(b) of the Act,<sup>12</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>13</sup>

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.<sup>14</sup> Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.<sup>15</sup>

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

The issue to be resolved is whether appellant timely filed a request for a hearing and if the request was untimely, whether the Office properly exercised its discretion by denying appellant's request for a hearing. Section 8124(b) of the Act states that a claimant is entitled to a hearing on his claim provided the request is made within 30 days from the date a decision has been issued. The 30-day time period for determining the timeliness of appellant's written review request commences on the first day following the issuance of the Office's decision.<sup>16</sup> In this case, the 30-day period for filing the request commenced May 9, 2003, the day after the issuance of the May 8, 2003 decision, and appellant had 30 days from May 9, 2003 to file his request for a written review. The postmark of appellant's undated letter is August 22, 2003 and therefore is untimely as it was not filed within 30 days of May 9, 2003. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether he sustained a medical condition causally related to compensable factors of his employment could equally well be addressed by requesting reconsideration.<sup>17</sup> Accordingly, the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

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<sup>12</sup> 5 U.S.C. §§ 8101-8193.

<sup>13</sup> 5 U.S.C. § 8124(b).

<sup>14</sup> *Andre Thyratron*, 54 ECAB \_\_\_\_ (Docket No. 02-1833, issued December 20, 2002; *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>15</sup> *Id.*

<sup>16</sup> *See Donna A. Christley*, 41 ECAB 90, 91 (1989).

<sup>17</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

**CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet his burden of proof in establishing that his right shoulder condition and left foot heel spur were sustained in the performance of duty.

The Office properly denied his request for an oral hearing as being filed untimely.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 24 and May 8, 2003 are hereby affirmed.

Issued: May 11, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member