United States Department of Labor
Employees' Compensation Appeals Board

KENT A. HENDERSON, Appellant	)	
and	)	**Docket No. 04-1631**
	)	**Issued: November 26, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

Appearances:
Brigitte Zenter, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 14, 2004 appellant filed a timely appeal from the October 21, 2003 merit decision of the Office of Workers' Compensation Programs, which denied compensation for his carpal tunnel and degenerative arthritis conditions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision. The Board also has jurisdiction to review the Office's May 13, 2004 decision denying his April 19, 2004 request for an oral hearing before an Office hearing representative.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty, as alleged; and (2) whether the Office properly denied his April 19, 2004 request for an oral hearing before an Office hearing representative.

FACTUAL HISTORY

On August 28, 2003 appellant, then a 55-year-old maintenance support clerk (modified), filed a claim alleging that his bilateral carpal tunnel syndrome and the degenerative arthritis at

the base of his thumbs were a result of his federal employment. He first became aware of these conditions on August 19, 2002. Appellant explained how he came to realize that these conditions were related to his employment, as follows:

> "I began working for the USPS in 1977 as an LSM [letter sorting machine] Clerk. In 1987 I changed crafts from the clerk craft to the maintenance craft. The positions I held over the years required a lot of work with my hands. The last position I held as a custodian required many hours of pushing a 9[-]pound dust mop, dumping trash, cleaning letter cases, general cleaning and many hours of restocking supplies in custodial closets."

The employing establishment submitted appellant's current position description with physical requirements. The employing establishment advised that he previously filed a repetitive motion claim, which was denied in 1998, and since that time had permanent work restrictions, including no overhead work and no repetitive motion of the wrists or arms. The employing establishment also advised that appellant monitored the facility security systems by viewing television-type monitors, issued handheld radios weighing approximately one pound, made and issued badges, answered telephones and occasionally entered data in a computer.

On September 18, 2003 the Office asked appellant to submit additional information to support his claim within 30 days, including medical opinion evidence supporting causal relationship.

On October 11, 2003 appellant's representative referred the Office to supporting medical reports, dated August 19 and December 10, 2002, which she stated were submitted with appellant's claim for compensation.

In a decision dated October 21, 2003, the Office denied appellant's claim for compensation. The Office found that the evidence was insufficient to establish that the events implicated by appellant occurred as alleged. The Office found, there was no medical evidence providing a diagnosis that could be connected to the claimed events. In an attached statement of appeal rights, the Office notified appellant that any request for a hearing must be made within 30 calendar days after the date of the decision.

On October 27, 2003 appellant's representative advised the Office that the claimed condition, bilateral carpal tunnel syndrome, was established by objective medical evidence and the submitted medical reports. She noted that the only other issue to be determined was whether the accepted condition was caused by appellant's federal employment and she asserted that this was also established through comprehensive medical reports. Appellant's representative stated: "We respectfully request you review the evidence and facts of this case and accept claimant's (bilateral carpal tunnel syndrome) CA-2 as work related."

Appellant's representative submitted evidence, including medical opinion evidence on causal relationship, which she contended she sent to the Office on August 28, 2003. She produced a facsimile activity report to support that the Office received 71 pages of transmitted material on that date.

In a letter postmarked April 19, 2004, appellant requested an oral hearing before an Office hearing representative.

In a decision dated May 13, 2004, the Office denied appellant's request. The Office found that the request was untimely and that appellant could equally well address the issue in his case by requesting reconsideration from the Office.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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]

Causal relationship is a medical issue,[3] 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 certainty,[5] 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]

ANALYSIS -- ISSUE 1

Appellant attributes his bilateral carpal tunnel syndrome and the degenerative arthritis at the base of his thumbs to the various positions he held over the years, which required a lot of work with his hands. There appears to be no dispute about the duties he performed over the years as an LSM clerk (1977-1980), manual distribution clerk (1980-1987), general mechanic (1987-1989), industrial equipment mechanic (1989-1991), building equipment mechanic (1991-1998), custodian (1998-2001) and maintenance support clerk (modified) (2001-present). But appellant indicated on his claim form that he first became aware of the claimed medical conditions on August 19, 2002. It was on this date, he indicated, that he first realized that his federal employment had caused or aggravated the condition of his wrists and thumbs.

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[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).

The employing establishment has raised doubt about this aspect of his claim. An April 15, 1998 medical form shows that appellant dated the onset of his bilateral wrist and thumb pain to January of that year. He was first examined for thumb carpometacarpal arthritis and probable carpal tunnel syndrome on January 13, 1998. And it was on January 13, 1998 that he filed a claim for compensation (OWCP File No. 13-1155948). The record contains a copy of the Office's April 22, 1998 decision denying that he sustained an occupational disease or illness. Because appellant performed no repetitive duties since 1998, the employing establishment alleged appellant was attempting to renew his 1998 claim by filing an essentially duplicate claim. His present claim for compensation, therefore, must be limited to whether he sustained an occupational disease or illness causally related to the duties he performed since returning to restricted duty on or about August 17, 1998. To the extent, then, that appellant attempts to relate his current carpal tunnel and thumb arthritis conditions to previous occupational exposures or to such repetitive duties as pushing a nine-pound mop, dumping trash, cleaning letter cases, general cleaning and many hours of restocking supplies in custodial closets, appellant has not met his burden of proof to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.

Appellant's restricted duties since August 17, 1998 and his duties as a maintenance support clerk (modified) may be accepted as factual and established. The question for determination is whether these duties caused or aggravated his diagnosed wrist and thumb conditions.

The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.[7] When the Office issued its October 21, 2003 decision, the record contained no medical opinion evidence to support that appellant's wrist and thumb conditions were causally related to the duties he performed since his return to restricted duty on August 17, 1998. A September 22, 1998 report relating evidence of acute and chronic overuse to his 21 years of work at the employing establishment does not appear relevant to the present claim. On October 11, 2003 appellant's representative referred to medical reports dated August 19 and December 10, 2002, reports relating appellant's injury to repetitive wrist function and to his job as a custodian, but these reports do not appear in the record before the Office's October 21, 2003 decision and are of questionable relevance to the present claim.

Appellant has the burden of proof to establish the essential elements of his claim, including submitting a physician's rationalized opinion on whether there is a causal relationship between his diagnosed wrist and thumb conditions and the established incident or factor of employment, in this case, the restricted duties he performed after August 17, 1998. Without this evidence, he has failed to establish the critical element of causal relationship. The Board will affirm the Office's October 21, 2003 decision denying his claim for compensation.

[7] 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides the right to a hearing:

> "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."[8]

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.[9] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[10] 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.[11]

ANALYSIS -- ISSUE 2

Because appellant made his April 19, 2004 request for a hearing more than 30 days after the Office's October 21, 2003 merit decision, he is not entitled to a hearing as a matter of right. The Office nonetheless considered the matter and correctly observed that he could still pursue his claim through the reconsideration process. As appellant may indeed address the issue of causal relationship by submitting the necessary medical opinion evidence to the Office with a request for reconsideration, the Board finds that the Office properly denied appellant's request for a hearing.[12] The Board will affirm the Office's May 13, 2004 decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish fact of injury. Although the restricted duties he performed after August 17, 1998 can be accepted as factual and established, there is no medical opinion evidence explaining how such duties caused or aggravated his diagnosed wrist and thumb conditions. The Board also finds that the Office

[8] 5 U.S.C. § 8124(b)(1).

[9] 20 C.F.R. § 10.616(a) (1999).

[10] *Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Rudolph Bermann*, 26 ECAB 354 (1975).

[12] *See, e.g., Jeff Micono*, 39 ECAB 617 (1988).

properly denied appellant's untimely request for an oral hearing before an Office hearing representative.[13]

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2004 and October 21, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[13] The Board notes that there is an outstanding request for reconsideration. On October 27, 2003 appellant's representative offered arguments and requested a review by the Office: "We respectfully request you review the evidence and facts of this case and accept the claimant's (bilateral carpal tunnel syndrome) CA-2 as work related." On return of the case record, the Office shall determine whether appellant is entitled to a merit review of his claim and shall issue an appropriate decision on his October 27, 2003 request for reconsideration.