United States Department of Labor
Employees' Compensation Appeals Board

ROBERT A. COSCIA, Appellant	)	
and	)	**Docket No. 06-716**
	)	**Issued: June 13, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lakewood, CO, Employer	)	

Appearances:
Robert A. Coscia, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 10 and August 9, 2005 merit decisions, denying his occupational injury claim and December 27, 2005 nonmerit decision, denying his request for reconsideration. 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 his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment; and (2) whether the refusal of the Office to reopen appellant's case for further consideration on the merits pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

FACTUAL HISTORY

On January 26, 2005 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left lateral epicondylitis as a result of

repetitive work activities. In response to the Office's request for an explanation regarding the relationship of the alleged condition to his employment, appellant stated, "Repetitive Motion -- (See Statement)." No additional statement was attached to the CA-2 form. He indicated that he first became aware of his condition on December 15, 2004.

On February 8, 2005 the Office informed appellant that the evidence submitted was insufficient to establish his claim and requested detailed information regarding the activities he believed contributed to his condition and a comprehensive medical report with a diagnosis, results of examinations and tests and a doctor's opinion with medical reasons on the cause of his condition. Appellant submitted a December 15, 2004 report from Dr. Frank R. Rauzi, a Board-certified family physician, reflecting that he had developed pain in his left elbow similar to pain in his right elbow. He found tenderness about the left lateral epicondylitis and provided a diagnosis of lateral epicondylitis. Dr. Rauzi opined that appellant's work position aggravated the elbow condition due to the repetitive motion associated with his employment.

By decision dated May 10, 2005, the Office denied appellant's claim on the grounds that the evidence submitted failed to establish that the events occurred as alleged or that he had sustained an injury under the Federal Employees' Compensation Act.

On May 23, 2005 appellant requested reconsideration, claiming that his body was "wearing down" from having worked 33 years at the employing establishment. He stated that as a clerk, he had been required to use his hands and arms to lift and case mail. As a letter carrier for the past 17 years, appellant claimed that his work became more intense and repetitive, requiring him to spend three to four hours per day casing mail while moving his arms constantly back and forth. He indicated that his duties involved pulling down mail for delivery and using his hands to clutch and grab bundles of mail and tie it down for delivery. Appellant stated that he had been using his left arm excessively to compensate for a right arm condition, which had previously been accepted by the Office.

Appellant submitted a July 1, 2005 note on a prescription pad from Dr. Rauzi indicating that he had seen appellant in his office on December 15, 2004, had provided a diagnosis of left lateral epicondylitis and had given appellant a steroid injection at that time.

By decision dated August 9, 2005, the Office accepted the work incident alleged, but affirmed the denial of appellant's claim on the grounds that he had not provided a comprehensive medical report establishing a causal relationship between his diagnosed condition and the accepted factors of employment.

On December 13, 2005 appellant submitted a request for reconsideration. By decision dated December 27, 2005, the Office denied his request on the grounds that he neither raised substantive legal questions nor submitted new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty

[1] 5 U.S.C. §§ 8101-8193.

as alleged,[2] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

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 the 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.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.[5] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[6]

ANALYSIS -- ISSUE 1

The Office accepted that appellant performed repetitive work duties sustained an injury. The issue at hand, therefore, is whether the medical evidence submitted is sufficient to establish that his diagnosed condition is causally related to the accepted employment factors. The Board finds that appellant has submitted insufficient medical evidence to establish that his diagnosed medical condition was caused or aggravated by factors of his federal employment.

Medical evidence of record consists of two reports from Dr. Rauzi. In a December 15, 2004 report, he stated that appellant had developed pain in his left elbow similar to pain in his right elbow and provided a diagnosis of lateral epicondylitis. Dr. Rauzi opined that appellant's

---

[2] *Joseph W. Kripp*, 55 ECAB ___ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained 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." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Michael R. Shaffer*, 55 ECAB ___ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[6] *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

elbow condition was aggravated by repetitive motion associated with his employment. Although he stated that appellant had developed pain in his left elbow similar to pain in his right elbow, Dr. Rauzi failed to provide a complete factual or medical background for appellant. Although he generally stated that appellant's elbow condition was aggravated by repetitive motion associated with his employment, he did not explain the physiological process how any specific duties performed by appellant caused or contributed to his condition. The Board finds that Dr. Rauzi's opinion is not well rationalized and is of diminished lacks probative value. In a July 1, 2005 note written on a prescription pad, Dr. Rauzi indicated that he had seen appellant in his office on December 15, 2004, had provided a diagnosis of left lateral epicondylitis and had given him a steroid injection at that time. This report fails to provide any opinion as to the cause of his condition and, therefore, also lacks probative value. As the medical evidence of record does not contain a rationalized medical opinion explaining how work-related incidents or factors caused or aggravated any medical condition or disability, appellant has failed to satisfy his burden of proof.

Appellant expressed his belief that his condition resulted from repetitive work activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, his belief that his condition was caused by work-related activities is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. He failed to submit the required information. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606, a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(ii) Advancing a point of law or fact not previously considered by the Office; or

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] *Id.*

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[9]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs 10.606(b)(2)(i) through (iii) of that section will be denied by the Office without review of the merits of the claim.[10]

ANALYSIS -- ISSUE 2

The Board finds that the Office's refusal to reopen appellant's case for further consideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

In order for appellant to obtain review of the merits of his claim, it was necessary for him either to show that the Office erroneously applied or interpreted a point of law; to advance a point of law or fact not previously considered by the Office; or to submit relevant and pertinent evidence not previously considered by the Office.[11]

On December 13, 2005 appellant submitted a form requesting reconsideration of the Office's denial of his claim. By decision dated December 27, 2005, the Office denied his request for reconsideration based upon his failure either to submit new and relevant evidence or to raise substantive legal questions. Appellant offered no additional medical evidence or new evidence of any nature whatsoever. He did not allege that the Office erroneously applied or interpreted a point of law; nor did he advance a point of law or fact or submit relevant and pertinent evidence not previously considered by the Office. Appellant had the opportunity to submit additional medical evidence in support of his request for reconsideration but chose not to do so. Because he did not meet any of the requirements of section 16.608(b), the Office was within its rights to deny his request for reconsideration.

CONCLUSION

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 did not abuse its discretion in refusing to reopen his case for further consideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606.

[10] 20 C.F.R. § 10.608(b).

[11] 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the December 27, August 9 and May 10, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board