

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

MARGARET N. WALSWORTH, Appellant

and

**U.S. POSTAL SERVICE, SOUTHSIDE
STATION, Eugene, OR, Employer**

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**Docket No. 06-820
Issued: June 14, 2006**

Appearances:
Margaret N. Walsworth, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 22, 2006 appellant filed a timely appeal from a December 22, 2005 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty, and a February 2, 2006 nonmerit decision, denying her 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 established that she sustained an injury while in the performance of duty; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 19, 2005 appellant, then a 57-year-old rural carrier associate, filed an occupational disease claim alleging that in April 2005 she first realized that her right shoulder and neck pain were caused by factors of her federal employment. She stated that her right shoulder began hurting after four years of reaching her arm out of a car window to open and

close mailboxes and reaching across her body to grab bundles of mail from a tray. Appellant further stated that on October 5, 2005 she began to experience pain in her neck.

Appellant submitted employment records which included a history of her prior employment-related injuries. In an October 22, 2005 narrative statement, she again described the development of her right shoulder and neck pain. Appellant noted her prior work-related tendinitis of the elbow and wrist and medical treatment she received from Dr. David A. Floyd, a general practitioner, and Dr. Helms, a chiropractor.

By letter dated November 9, 2005, the Office requested that the employing establishment submit information regarding appellant's claim. In a letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the factual and medical evidence she needed to submit to establish her claim.

The employing establishment submitted an accident report dated October 27, 2005 which indicated that in April 2005 appellant experienced pain in her right neck and shoulder as a result of casing mail and repeatedly reaching out a window. In a March 6, 2000 letter, the employing establishment advised appellant that it had received a medical report from her attending physician which found that she sustained employment-related left lateral epicondylitis. It advised her to file an occupational disease claim as it appeared that her alleged injury arose over the course of more than one work shift. It also advised her about the factual and medical evidence she needed to establish her claim.

The Office received the employing establishment's January 12, 1999, March 6, 2000 and October 31, 2005 requests for medical information from appellant's attending physician and a registered nurse. It also received a medical assessment questionnaire completed by appellant on January 20, 1999, and a January 29, 1999 medical report by Dr. Mitch Bouskin, an employing establishment physician, regarding her preemployment physical and mental conditions. The January 29, 1999 report found a stable mental examination and that appellant had full range of motion in her back without pain.

On November 21, 2005 appellant provided a description of her work duties and activities outside of work. She also described how her employment caused right shoulder and neck pain. Appellant submitted Dr. Floyd's November 22, 2005 medical report which found that she sustained a cervical strain "presumably" related to her occupation.

By decision dated December 22, 2005, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence failed to establish a causal relationship between the alleged condition and her employment duties. In letters dated January 4 and 10, 2006, she requested reconsideration. On January 10, 2006 appellant stated that Dr. Floyd would be submitting a letter of clarification as he believed that there was a causal relationship between her injury and employment. No evidence or legal argument accompanied her requests.

By decision dated February 2, 2006, the Office denied appellant's requests for reconsideration. The Office found that she did not submit any evidence relevant to the issue of a causal relationship between her alleged injuries and her employment.¹

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 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 a causal relationship 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. 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

¹ On appeal, appellant has submitted new evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and provide a written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish that her right shoulder and neck conditions are causally related to factors of her federal employment.

Appellant submitted a January 29, 1999 preemployment report by Dr. Bousskin which found that she was mentally stable and that her back had full range of motion without pain. This report fails to address a causal relationship between the claimed injury and appellant's employment. This report is of diminished probative value to the issue in this appeal since it predates the time of the claimed April 2005 injury. The Board finds this report is insufficient to establish appellant's burden of proof.

Dr. Floyd's November 22, 2005 medical report found that appellant sustained a cervical strain "presumably" related to her employment. The Board finds that Dr. Floyd's opinion regarding the cause of the diagnosed condition is speculative, and is therefore of diminished probative value.⁶ No other medical evidence was submitted in support of the claim.

Appellant has failed to submit rationalized medical evidence of record establishing that her right shoulder and neck problems were causally related to factors of her employment as a rural carrier associate. She did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁷ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In letters dated January 4 and 10, 2006, appellant requested reconsideration of the Office's December 22, 2005 decision, finding that she did not sustain an injury while in the performance of duty. The relevant underlying issue in this case is whether appellant sustained a medical condition causally related to factors of her federal employment.

⁶ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

⁷ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(1)-(2).

⁹ *Id.* at § 10.607(a).

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her requests for reconsideration. Although she stated that Dr. Floyd was planning to submit a supplemental report regarding the causal relationship between her alleged injuries and employment, he failed to do so. Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to further merit review.¹⁰

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2006 and December 22, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 14, 2006
Washington, DC

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

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

¹⁰ See *James E. Norris*, 52 ECAB 93 (2000).