United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 06-1952**
	)	**Issued: November 21, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Barboursville, WV, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 21, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 2, 2006, denying her occupational disease claim and a nonmerit decision dated May 23, 2006, denying her request for a review of the written record as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the May 23, 2006 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that she sustained carpal tunnel syndrome and/or cubital tunnel syndrome causally related to factors of her federal employment; and (2) whether the Office properly denied her request for a review of the written record as untimely under 5 U.S.C. § 8124.

FACTUAL HISTORY

On November 25, 2005 appellant, then a 36-year-old city letter carrier, filed an occupational disease claim alleging that she sustained pain extending from her elbows to her fingers, numbness in her fingers and an inability to tightly grip objects causally related to factors of her federal employment. In a statement accompanying her claim, she related that for the prior few months she awoke with tingling fingers which lasted for several hours. With increased mail casing her symptoms worsened. Appellant indicated that on November 24, 2005 she experienced shooting pains down her arms and could no longer case mail. She went to the hospital and was diagnosed with carpal tunnel syndrome.

In a report dated November 30, 2005, Dr. Stanley S. Tao, a Board-certified orthopedic surgeon, listed findings on physical examination of a bilateral positive Tinel's sign and Phalen's test and compression of the carpal tunnel. He diagnosed carpal tunnel syndrome and cubital tunnel syndrome and requested authorization for objective studies. Dr. Tao submitted similar reports dated December 20, 2005 and January 11, 2006. He listed physical findings, diagnosed carpal and cubital tunnel syndromes and awaited authorization for objective studies.[1]

By letter dated January 17, 2006, the Office requested additional information from appellant, including the submission of a medical report containing an opinion on the cause of her condition. In a response received January 25, 2006, appellant described those job activities to which she attributed her carpal tunnel syndrome, including casing mail, loading heavy trays of mail onto her vehicle, engaging and disengaging the parking break on her vehicle and delivering mail.

In a report dated February 28, 2006, Dr. Tao indicated that he had evaluated appellant for bilateral carpal and cubital tunnel syndromes. He related: "[Appellant] states that she thinks this is related to her job at work and denies any traumatic injury. She states that she does repetitive activities with both of her wrists and elbows at work." Dr. Tao again requested authorization for objective studies and noted that her "clinical examination is consistent with the above-mentioned diagnoses."[2]

By decision dated March 2, 2006, the Office denied appellant's claim on the grounds that she failed to establish a medical condition arising from her accepted work duties.

In a report dated March 9, 2006, Dr. Tao stated: "I do feel that her occupation contributes to her diagnoses of bilateral carpal and cubital tunnel syndromes." In office visit notes from the same date, he opined that appellant's occupation contributed to her carpal and

[1] In the progress report dated January 11, 2006, Dr. Tao noted that appellant experienced "shooting pains" from her elbow to her hands at work.

[2] In an undated disability certificate, Dr. Tao opined that appellant was unable to work until February 16, 2006.

cubital tunnel syndromes "[g]iven her line of work with repetitive use of [her] hands and her stating that doing her job exacerbates her numbness and pain." Dr. Tao found that she was unable to work.[3]

In a memorandum of telephone call dated April 6, 2006, a claims examiner noted that appellant stated that she had not received the Office's decision on her claim. The claims examiner verified appellant's address and mailed her another copy of the decision.

By letter dated April 20, 2006, postmarked April 26, 2006, appellant requested a review of the written record by an Office hearing representative. She indicated that she had not received the Office's decision until she called and requested a copy on April 6, 2006.

In a decision dated May 23, 2006, the Office denied appellant's request for a review of the written record as untimely under section 8124.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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;[7] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[8] and (3) medical evidence establishing 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.[9]

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[3] The record contains progress reports from Dr. Tao dated March 15 and April 5 and 12, 2006 listing findings of bilateral positive Tinel's signs, positive Phalen's tests and compression of the carpal canals.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

[8] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[9] *Ernest St. Pierre*, 51 ECAB 623 (2000).

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.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

ANALYSIS -- ISSUE 1

Appellant attributed her carpal and cubital tunnel syndromes to her work as letter carrier casing, carrying and delivering mail. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

The record contains numerous progress reports from Dr. Tao in which he listed physical findings consistent with carpal tunnel syndrome, diagnosed carpal and cubital tunnel syndromes and found appellant unable to perform her usual employment. In these reports, however, Dr. Tao did not address the cause of appellant's carpal and cubital tunnel syndromes. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[14] Consequently, Dr. Tao's progress reports are insufficient to meet appellant's burden of proof.

In a report dated February 28, 2006, Dr. Tao diagnosed carpal tunnel syndrome and cubital tunnel syndrome. He indicated that appellant attributed her condition to her employment and that she maintained that she performed repetitive activities with her wrists and elbows during the course of her employment. Dr. Tao, however, did not provide his own finding on the cause of the diagnosed condition but instead merely described appellant's belief regarding causation. A physician's report is of little probative value when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.[15]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[16] To establish causal relationship, she must submit a physician's report in which

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[10] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

[13] *Judy C. Rogers*, 54 ECAB 693 (2003).

[14] *Conrad Hightower*, *supra* note 10.

[15] *Earl David Seal*, 49 ECAB 152 (1997).

[16] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[17] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained carpal and/or cubital tunnel syndrome due to factors of her federal employment.[18]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation 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."[19] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[20]

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."[21]

Section 10.616(a) further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. 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."[22]

The Office's regulations provide that a request received more than 30 days after the Office's decision is subject to the Office's discretion and the Board has held that the Office must exercise this discretion when a hearing request is untimely.[23]

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[17] *Calvin E. King*, 51 ECAB 394 (2000).

[18] The Board cannot consider Dr. Tao's March 9, 2006 report as it was submitted after the Office's last merit decision dated March 2, 2006; *see* 20 C.F.R. § 501.2(c). Appellant can request reconsideration before the Office under 5 U.S.C. § 8128 based on this additional evidence.

[19] 5 U.S.C. § 8124(b)(1).

[20] *Frederick D. Richardson*, 45 ECAB 454 (1994).

[21] 20 C.F.R. § 10.615.

[22] 20 C.F.R. § 10.616(a).

[23] 20 C.F.R. § 10.616(b); *Joseph R. Giallanza*, 55 ECAB 186 (2003).

ANALYSIS -- ISSUE 2

The Office issued a decision on March 2, 2006 denying appellant's occupational disease claim. She sought a review of the written record by letter dated April 20, 2006 and postmarked April 25, 2006. The Office denied appellant's request for a review of the written record as untimely by decision dated May 23, 2006. As her request for a review of the written record was postmarked April 25, 2006, more than 30 days after the Office issued its March 2, 2006 decision, she was not entitled to a review of the written record as a matter of right.

Appellant contends that she did not receive the Office's March 2, 2006 decision until after she called the Office on April 6, 2006 to request a copy of the decision. The Board has held that, in the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received by that individual.[24] Under the mailbox rule, evidence of a properly addressed letter together with evidence of proper mailing may be used to establish receipt.[25] While appellant's telephone call to the Office on April 6, 2006 provides some evidence that she did not receive the March 2, 2006 decision, a properly addressed copy of the March 2, 2006 decision with attached notification of appeal rights appears in the case record. Consequently, the evidence is not sufficient to rebut the presumption of receipt by appellant under the mailbox rule.

The Office has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter or right.[26] The Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for a review of the written record on the basis that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[27] In this case, the evidence of record does not establish that the Office committed any action in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. For these reasons, the Office properly denied her request for a review of the written record as untimely under section 8124 of the Act.

CONCLUSION

The Board finds that appellant has not established that she sustained carpal tunnel syndrome and/or cubital tunnel syndrome causally related to factors of her federal employment. The Board further finds that the Office properly denied her request for a review of the written record as untimely.

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[24] *Samuel R. Johnson*, 51 ECAB 612 (2000).

[25] *See Joseph R. Giallanza*, *supra* note 23.

[26] *Afegalai L. Boone*, 53 ECAB 533 (2002).

[27] *See André Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 23 and March 2, 2006 are affirmed.

Issued: November 21, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board