United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 07-66**
	)	**Issued: April 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2006 appellant filed a timely appeal from an August 3, 2006 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for a review of the written record. He also appealed a May 30, 2006 merit decision that denied his claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On April 15, 2006 appellant, then a 55-year-old mail carrier, filed an occupational disease claim stating that he developed bilateral lateral epicondylitis and left medial epicondylitis in the performance of duty. He stated that he first became aware of his condition and related it to his

employment on April 5, 2006. Appellant identified numerous job duties, including lifting and casing mail; reaching out while delivering mail, newspapers and telephone books; placing mail in flats; and lifting buckets and mail trays, as possible causes of his condition. He did not stop work.

On April 26, 2006 the Office requested additional information concerning appellant's claim. In response, appellant submitted a statement further detailing the job responsibilities he believed contributed to his condition. He also submitted an April 5, 2006 report from Dr. Karen M. Perl, an osteopath. Upon examination, Dr. Perl found that appellant had bilateral tenderness in the lateral epicondyles and was also tender in the left medial epicondyle. She indicated that appellant had been referred from a Veterans' Affairs medical facility, as the staff there believed his condition might be work related. Dr. Perl also noted that appellant "works as a mail carrier for the United States Postal Service doing repetitive activities that would be consistent with this type of injury." She concluded that "it appears [appellant] has a repetitive occupational injury for the [employing establishment] with multiple problems including tendinitis and possible nerve damage with gradual insidious onset starting in February and March 2006."

By decision dated May 30, 2006, the Office denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish a causal relationship between appellant's condition and employment factors.

Appellant submitted a request for a review of the written record dated June 27 and postmarked July 1, 2006. With his request, he submitted a June 21, 2006 report from Dr. Louise Lamarre, a Board-certified emergency medicine specialist.

By decision dated August 3, 2006, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. The Office noted that the request was postmarked July 1, 2006, more than 30 days after the date of the Office's final decision, issued on May 30, 2006. Nonetheless, the Office indicated that it had, in its discretion, considered appellant's request and determined that appellant's case could be equally well addressed should appellant choose to request reconsideration and submit evidence not considered before the May 30, 2006 merit decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[4] The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."[5]

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.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet his burden of proof in establishing that he developed an occupational disease in the performance of duty. The record reflects that appellant has bilateral lateral epicondylitis and left medial epicondylitis and that his job requires him to bend and lift. However, he has not presented sufficient medical evidence to establish a causal relationship between his diagnosed condition and employment factors.

In support of his claim, appellant submitted an April 5, 2006 report from Dr. Perl who provided some support for causal relationship, stating that appellant performed "repetitive activities that would be consistent with this type of injury," and noting that it "appears" that

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[5] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004); *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

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

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

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

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

appellant has a "repetitive occupational injury." However, Dr. Perl did not provide sufficient explanation or rationale to support her opinion. She did not identify the employment factors or "repetitive activities" that she believed might have contributed to appellant's condition, nor did she explain how such repetitive activities would have physically caused or aggravated appellant's epicondylitis. The Board has held that a medical report not fortified by explanation or rationale is not probative and does not establish a causal relationship between appellant's condition and employment factors.[10] Moreover, Dr. Perl's report was speculative in nature as she indicated that appellant's conditions "appears" to be employment related. She did not conclude with definitive authority that appellant's condition was work related. The Board has held that a medical report that is speculative or equivocal in nature is of diminished probative value.[11] Accordingly, the medical evidence does not establish a causal relationship between appellant's diagnosed condition and employment factors.[12]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides 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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[13] Section 10.615 of the federal regulation implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[14] The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[15]

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,[16] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary

[10] In order to be considered rationalized medical evidence, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Victor J. Woodhams*, *supra* note 3, at 352; *Steven S. Saleh*, 55 ECAB 169, 172 (2003). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

[11] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

[12] On appeal and in support of his July 1, 2006 request for a review of the written record, appellant submitted additional new evidence, Dr. Lamarre's report. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[13] 5 U.S.C. § 8124(b)(1).

[14] 20 C.F.R. § 10.615.

[15] *Id.* at § 10.616(a).

[16] 5 U.S.C. §§ 8101-8193.

authority in deciding whether to grant a hearing.[17] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.[18]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for a review of the written record, as it was postmarked more than 30 days after the date of issuance of the Office's decision. The Office issued its decision on May 30, 2006. Appellant's request was postmarked July 1, 2006, more than 30 days later. Although appellant's request was dated June 27, 2006, within the 30-day time limit, the Office properly determined that the request was filed on July 1, 2006, the date the request was postmarked. The Board has noted that, under Office regulations, a hearing request is filed on the day it is sent, "as determined by postmark or other carrier's date marking."[19] Therefore, appellant's request was filed on July 1, 2006, more than 30 days after the Office's May 30, 2006 decision and accordingly was untimely.

Although the Office determined that appellant's request was untimely, it nevertheless exercised its discretion by further considering appellant's request for a review of the written record in view of the matter presented. However, the Office determined that issue in appellant's case could be equally well addressed by his submission of a request for reconsideration along with new supporting evidence. The Board finds that the Office properly exercised its discretion. Accordingly, the Office properly denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he developed an occupational disease in the performance of duty and that the Office properly denied appellant's request for a review of the written record as untimely.

[17] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[18] *Teresa M. Valle*, 57 ECAB __ (Docket No. 06-438, issued April 19, 2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

[19] *See Leona B. Jacobs*, 55 ECAB 753 (2004); 20 C.F.R. § 10.616.

ORDER

IT IS HEREBY ORDERED THAT the August 3 and May 30, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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