United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 07-460**
	)	**Issued: August 3, 2007**
DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICES, Shiprock, NM, 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 December 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 14, 2006. 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 a breast implant rupture causally related to her November 7, 2004 employment injury; and (2) whether the Office's Branch of Hearings and Review properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On February 24, 2006 the Office received a traumatic injury claim (Form CA-1) dated November 15, 2004. A supervisor indicated on the claim that it was submitted at the time of injury but the paperwork was lost. Appellant, a nurse, alleged that she sustained an injury on

November 7, 2004 when she lifted and moved a heavy patient. She stated that the injury was to the area of the right breast and right back. The reverse of the claim form indicated that appellant was off work from November 7 to 22, 2004.

The evidence submitted in 2006 included a November 19, 2004 report from Dr. Ryan Naffziger, a plastic surgeon, who stated that appellant had a recent strain injury at work when she was lifting a patient and injured her right arm and chest wall. Dr. Naffziger stated that appellant had a muscle strain of the serratus muscles as well as pectoralis on the right side. He noted that appellant had multiple procedures for bilateral breast reconstruction in the past, but he did not feel that the injury involved the latissimus dorsi or the implant.

The Office accepted the claim for sprain/strain. Appellant submitted additional medical evidence regarding the current condition. In a report dated January 20, 2006, Dr. Naffziger indicated that appellant reported that her employment injury had completely resolved for several months and then over the prior few weeks she had more pain in her right side. He provided results on examination and indicated that it was consistent a subcutaneous rupture of the silicon implant. In a report dated February 20, 2006, Dr. Naffziger stated that it was initially thought that appellant involved only the chest wall muscles, but over the last several months the pain was persistent, worse on the right.

In a Form CA-16 report, dated February 22, 2006, Dr. Naffziger diagnosed ruptured reconstruction implants.[1] He checked a box "yes" that the condition was causally related to employment, stating "possible that scar capsule tear caused by lifting/straining allowing contents of implant to leak into [illegible]." Dr. Naffziger indicated that surgery was proposed to exchange the ruptured implants. In another Form CA-20 report, dated February 22, 2006, Dr. Naffziger again checked a box "yes" on causal relationship with employment, stating, "lifting = tear of scar capsule allowing rupture of implant to extrude into subcutaneous tissue."

On March 15, 2006 appellant underwent surgery by Dr. Naffziger for removal of implants, corrections of asymmetry and replacement with saline implants, correction of abdominal scar and liposuction of the neck. The report described the operation performed as "removal of right breast 400 [milliliter] mL silicone gel implant, intact, and left breast 500 mL ruptured silicone gel implant and implant material (contained intra-capsular rupture)."

By decision dated July 14, 2006, the Office determined that appellant's current condition was not employment related. The Office denied authorization for medical treatment.

In a letter postmarked August 15, 2006, appellant requested a review of the written record. By decision dated September 15, 2006, the Branch of Hearings and Review determined that the request was untimely. The Branch of Hearings and Review further stated that it had exercised its discretion with respect to the request and the issue could equally well be addressed through the reconsideration process.

[1] A Form CA-16, authorization for examination and/or treatment, is intended to be used when emergency medical care for a traumatic injury is necessary. *See* 20 C.F.R. § 10.300.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including that specific condition or disability for which compensation is claimed is causally related to the employment injury.[3] To establish causal relationship between the condition claimed and the employment incident, the employee must submit rationalized medical opinion evidence supporting causal relationship.[4]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a sprain/strain on November 7, 2004 when she was lifting and moving a patient. Although the Office refers to a recurrence in the July 14, 2006 decision, there is no indication that appellant filed a Form CA-2a (notice of recurrence of disability). It appears that appellant is alleging that she sustained a left breast implant rupture causally related to the November 7, 2004 injury, resulting in a March 15, 2006 surgery.

It is appellant's burden of proof to establish that a specific condition is causally related to the employment injury. Dr. Naffziger checked a box "yes" on causal relationship between ruptured implants and the November 7, 2004 injury in the February 22, 2006 form reports. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[6] In the form reports, Dr. Naffziger briefly discussed a tear of a scar capsule from lifting without providing a rationalized medical opinion. The Board notes that there was a significant time period between the employment injury and the 2006 reports from Dr. Naffziger and his medical history noted that the employment injury apparently had resolved for several months. In addition, the surgery report appeared to indicate that the rupture was in the left breast implant, whereas appellant reported right side symptoms following the employment injury. A rationalized medical opinion must be based on a complete factual and medical background and must address the issues noted above.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[5] *Id.*

[6] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

The Board finds that the record does not contain a rationalized medical opinion based on a complete background that is sufficient to meet appellant's burden of proof in this case.[7] The condition of breast implant rupture is not established as employment related.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "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."[8] Section 10.615 of the federal regulations 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.[9] The 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."[10]

ANALYSIS -- ISSUE 2

The merit decision was dated July 14, 2006. A claimant is not entitled to a review of the written record as a matter of right unless it is postmarked within 30 days. In this case, the thirtieth day following the decision was August 13, 2006, a Sunday, and therefore appellant had until Monday, August 14, 2006 to request a review of the written record.[11] The request for review of the written record was postmarked August 15, 2006. Since this is more than 30 days after the July 14, 2006 Office decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.[12] In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.[13] There is no evidence of an abuse of discretion in this case.

[7] It is noted that the Board may review only evidence that was before the Office at the time of the July 14, 2006 decision. 20 C.F.R. § 501.2(c).

[8] 5 U.S.C. § 8124(b)(1).

[9] 20 C.F.R. § 10.615.

[10] 20 C.F.R. § 10.616(a).

[11] If the last date of the relevant time period is a Saturday, Sunday or legal holiday, it is not included in determining timeliness. *John B. Montoya,* 43 ECAB 1148, 1151 (1992).

[12] *See Cora L. Falcon,* 43 ECAB 915 (1992).

[13] *Id.*

CONCLUSION

Appellant did not meet her burden of proof to establish a breast implant rupture as causally related to the November 7, 2004 employment injury. The request for a review of the written record was untimely and there is no evidence that the Office abused its discretion in denying the request.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and July 14, 2006 are affirmed.

Issued: August 3, 2007
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