United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 07-1033**
	)	**Issued: September 18, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Marysville, CA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 6, 2007 appellant filed a timely appeal from a January 12, 2007 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for reconsideration and a merit decision dated July 20, 2006, which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim as well as the nonmerit decision.

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 reconsideration without conducting a merit review.

FACTUAL HISTORY

On February 6, 2006 appellant, then a 35-year-old city carrier, filed an occupational disease claim stating that he developed low back and neck, bilateral shoulder pain, radiating down the right arm and right hip condition in the performance of duty. He first became aware of

his conditions on June 4, 2004 and first related them to his employment on February 3, 2005. Appellant explained:

> "The factors of employment that are exacerbating my conditions are the standing, twisting, turning, reaching, squatting, pushing and pulling of the hamper to and from the workroom floor, also the lifting of the trays and placing them in the hamper. The lifting of parcels from the hamper and the lifting of the trays while loading the vehicle. Any factor of employment that requires lifting or carrying exacerbates my condition. Additionally, the mounting and dismounting from the [employing establishment] vehicle aggravates my claimed conditions."

He did not stop work. The employing establishment controverted appellant's claim. It submitted a job description detailing the requirements of his city carrier position.

By decision dated April 6, 2006, the Office denied appellant's occupational disease claim on the grounds that the evidence of record did not establish that an incident occurred as alleged and that the medical evidence lacked a diagnosis which could be connected to the claimed work duties.

Appellant requested reconsideration on May 8, 2006. He submitted an undated form report entitled "Medical Documentation for Requesting Light Duty" that detailed his work restrictions.[1] Appellant also submitted two reports from Dr. Gurmail S. Brar, a Board-certified family practitioner. In a January 17, 2006 report, Dr. Brar stated that appellant suffered from "a condition which affects him physically as well as mentally." He explained that appellant "gets muscle spasms in his back, shoulder, neck and also has … chronic low back pain, hip and wrist pain." Dr. Brar noted that appellant also suffered from insomnia. He advised that appellant was able to perform his duties as a mail carrier but that his conditions affected the manner in which he completed his assigned duties. On August 24, 2005 Dr. Brar diagnosed "depression, fibromyalgia, chronic back pain and various muscle joint pains." He noted that appellant "has had all these symptoms since he returned from the Gulf War." Appellant also provided an undated, unsigned duty status report diagnosing Gulf War Syndrome and fibromyalgia.

On April 21, 2006 appellant accepted the employing establishment's offer of a light-duty job assignment.

By decision dated July 20, 2006, the Office modified the basis of its denial of the claim. The Office determined that appellant established that the employment conditions occurred as alleged. However, it found that appellant had not submitted medical evidence establishing a specific diagnosis that could be connected to the accepted work duties.

Appellant requested reconsideration on October 4, 2006.

By decision dated January 12, 2007, the Office denied appellant's request for reconsideration without conducting a merit review.

[1] The signature on the report is illegible.

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 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.[3] 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.[4]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[5] The test for determining whether an employee 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."[6]

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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

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[2] 5 U.S.C. §§ 8101-8193.

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

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

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

[6] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 4.

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

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

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

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

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. Appellant submitted the August 24, 2005 and January 17, 2006 reports of Dr. Brar, who diagnosed various conditions including depression, Gulf War Syndrome, fibromyalgia, and chronic low back, hip and wrist pain. However, Dr. Brar did not provide any opinion on causal relationship. He did not explain how appellant's various conditions were caused or aggravated by his employment. Dr. Brar did not discuss appellant's work duties, but noted merely that appellant's conditions affected his ability to perform the functions of his position. The Board has previously held that a medical report which does not address causal relationship is of diminished probative value on that issue.[11] As noted, a medical report that is not fortified by rationale is of limited probative value.[12] The Board finds that Dr. Brar's reports are of limited probative value as the doctor did not address causal relationship or provide any explanation or rationale connecting appellant's claimed conditions to specific factors of his employment. Moreover, Dr. Brar's August 24, 2005 report suggested a different possible cause for appellant's conditions: he noted that appellant had exhibited all of his symptoms since returning from service in the Gulf War. The remaining evidence of record diagnosing Gulf War Syndrome and fibromyalgia is of no probative value as there is no indication that it was prepared by a physician.[13] Accordingly, 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 medical evidence does not support that appellant's claimed conditions were caused by specific factors of his employment.[14]

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulation provides guidance for the Office in using this discretion.[15] The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

> "(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

[11] *See, e.g., Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *See supra* note 7; *see also Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

[13] *See Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988) (unsigned notes of medical treatment are of no probative value).

[14] On appeal, appellant submitted additional evidence. However, the Board may not consider new evidence for the first time on appeal as its review of a case is limited to the evidence that was in the record which was before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c).

[15] 20 C.F.R. § 10.606(b)(2) (1999).

"(2) Advances a relevant legal argument not previously considered by [the Office]; or

"(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[16]

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[17] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[18]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for reconsideration without conducting further merit review. On October 4, 2006 appellant requested reconsideration of the Office's April 6, 2006 decision. He did not submit any legal arguments or assert that the Office misinterpreted a point of law or fact. The record reflects that no additional evidence was submitted to the Office. Accordingly, the Office properly denied appellant's reconsideration request without reopening the claim as appellant's request did not meet any of the above-listed criteria warranting a merit review.

CONCLUSION

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 Office properly denied appellant's October 4, 2006 request for reconsideration without conducting a merit review.

[16] *Id.*

[17] *Id*. at 10.608(b) (1999).

[18] *Annette Louise*, 54 ECAB 783 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2007 and July 20, 2006 decisions of the Office of Workers' Compensation Program are affirmed.

Issued: September 18, 2007
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