

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

M.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Tualatin, OR, Employer

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**Docket No. 08-175
Issued: April 18, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 11, 2007 merit decision denying her occupational disease claim and an October 11, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a pulmonary condition 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 April 19, 2007 appellant, then a 55-year-old mail carrier, filed an occupational disease claim alleging that she sustained chronic bronchitis due to her work. She stated that she had a

physician's note to stay home but that she was required to work due to a shortage of personnel.¹ Appellant first became aware of her condition on November 8, 2006 and first realized its relationship to her work on November 17, 2006.

Appellant submitted a statement in which she indicated that she began to have increased pulmonary symptoms in early November 2006, which made it increasingly difficult to walk her delivery route. She worked six days per week (often for more than eight hours per day) and, due to a shortage of personnel, she had to work extra mail routes. Appellant advised that her routes had the heaviest mail volume in the office. She submitted a schedule of days she worked in late 2006 and April 2007 statements in which coworkers indicated that they noticed her coughing at work.

On April 19, 2007 Ms. Fulton indicated that appellant had worked four hours per day since April 14, 2007 and asserted that she was not forced to work against her medical restrictions.²

On December 30, 2006 Dr. Michael Eidoff, an attending Board-certified internist, indicated that appellant reported that two weeks prior she began to experience increased coughing and wheezing. He diagnosed acute exacerbation of chronic obstructive pulmonary disease. Pulmonary function testing from December 13, 2006 showed mild chronic obstructive pulmonary disease and x-ray testing from December 30, 2006 showed the same condition.³

On January 4, 2007 Dr. Frank S. Rosenbloom, an attending Board-certified internist, stated that appellant should be off work until January 15, 2007. On January 11, 2007 he indicated that appellant could work one "schedule route" per day until the end of the month.

In an April 12, 2007 form report, Dr. Rosenbloom stated: "[chronic obstructive pulmonary disease] with acute or chronic bronchitis made worse by working conditions." He indicated that appellant needed to work half-time or limited duty "for a while" and that she should avoid "bad weather." Dr. Rosenbloom also recommended various work restrictions. On April 5, 2007 he stated that appellant was to be off work for one week and then start back at work on a half-time basis until further notice.

On April 26, 2007 the Office requested that appellant submit additional factual and medical evidence in support of her claim. In a May 3, 2007 statement, appellant stated that in November 2006 she had to work outside in rainy and snowy conditions. She felt that carrying heavy objects on her route exacerbated her pulmonary condition. Appellant submitted a schedule of days she worked in early 2007. On May 25, 2007 Ms. Fulton indicated that appellant was not exposed to harmful fumes or chemicals at work and was required to lift and carry up to 70 pounds while delivering her route under various weather conditions.

¹ Marilyn Fulton appellant's supervisor, stated that appellant had recently been working four hours per day casing mail.

² The supervisor also commented on appellant's history of smoking cigarettes.

³ Appellant submitted other reports from early 2007, including results of diagnostic testing, which contained a diagnosis of acute exacerbation of chronic obstructive pulmonary disease.

In an April 5, 2007 report, Dr. Rosenbloom stated that appellant reported that the employing establishment forced her to work while sick and that she had stopped smoking in November 2006. He diagnosed exacerbation of chronic obstructive pulmonary disease and acute bronchitis and recommended that she stay off work a week. On April 26, 2007 Dr. Rosenbloom stated that appellant should work on a part-time basis for a couple weeks and noted, with regard to her need to keep off smoking, “[T]he only problem is that her husband continues to smoke.”⁴

In a July 11, 2007, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a pulmonary condition in the performance of duty.⁵

Appellant requested reconsideration of the Office’s July 11, 2007 decision. In a July 9, 2007 letter, she discussed her use of medications and asserted that she did not have to use them prior to her “work-induced condition.” In an August 3, 2007 letter, appellant indicated that she was forced to work when she was sick and that she had to work in the cold when her clothes were soaked due to snow or rain. She asserted that her husband only occasionally smoked cigars and did so outside of their home.

In an October 11, 2007 decision, the Office denied appellant’s request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ 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 specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

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

⁴ Appellant also submitted a January 30, 2007 report in which Dr. Rosenbloom diagnosed pneumonia and exacerbation of chronic obstructive pulmonary disease.

⁵ The Office indicated that it had accepted appellant’s account of her job duties and work conditions. It noted that Dr. Rosenbloom indicated that appellant’s smoking continued to be a problem for her.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.⁹

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained an employment-related pulmonary condition beginning in late 2006 due to her mail delivery job, which included lifting and carrying heavy mail while walking outside and being exposed to cold and other weather conditions for extended periods. The Board finds that appellant established the occurrence of employment factors as alleged, but did not submit sufficient medical evidence to establish that her pulmonary condition was caused by her work duties.

Appellant submitted several reports, dated between January and April 2007, in which Dr. Rosenbloom, an attending Board-certified internist, diagnosed exacerbation of chronic obstructive pulmonary disease, acute bronchitis or pneumonia. Dr. Rosenbloom also indicated that appellant was partially or totally disabled for various periods beginning in January 2007.

In an April 12, 2007 form report, Dr. Rosenbloom stated: “[chronic obstructive pulmonary disease] with acute or chronic bronchitis made worse by working conditions.” However, his report is of limited probative value because he did not provide a clear opinion addressing how appellant's work caused or aggravated her pulmonary condition or whether he was merely reporting her belief of a work-related cause.¹⁰ Dr. Rosenbloom did not provide any indication what particular working conditions might have caused or aggravated appellant's pulmonary condition or otherwise provide medical rationale on the matter of causal relationship.¹¹ He did not provide a full history of appellant's history of cigarette use or address how it related to appellant's pulmonary symptoms.

Beginning in December 2006, several attending physicians also diagnosed exacerbation of chronic obstructive pulmonary disease. However, none of these physicians provided any indication that appellant's accepted work duties or conditions caused or aggravated her

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁰ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

¹¹ Dr. Rosenbloom indicated that appellant should avoid “bad weather” but he did not state that weather conditions caused or aggravated her condition.

pulmonary condition. Appellant did not submit rationalized medical evidence showing that she had an employment-related pulmonary condition and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹² the Office's regulations provide that the evidence or argument submitted by 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.¹³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.¹⁴ 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 on the merits.¹⁵ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶

ANALYSIS -- ISSUE 2

In support of her reconsideration request, appellant submitted July 9 and August 3, 2007 letters. She asserted that she did not have to use various medications prior to her "work-induced condition." Appellant also further discussed her working conditions and stated that her husband only occasionally smoked cigars outside of their home. The submission of these letters would not require reopening of appellant's claim, because the statements contained within are not relevant to the main issue of the present case which is medical in nature, *i.e.*, whether she submitted medical evidence establishing an employment-related medical condition. Appellant's claim can only be established by the submission of new and relevant medical evidence which shows such a relationship.

Appellant has not established that the Office improperly denied her request for further review of the merits of its July 11, 2007 decision under section 8128(a) of the Act, because the materials she submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

¹² Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application." 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608(b).

¹⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a pulmonary condition in the performance of duty. The Board further finds that the Office properly denied her 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 Office of Workers' Compensation Programs' October 11 and July 11, 2007 decisions are affirmed.

Issued: April 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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