United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 08-693**
	)	**Issued: August 19, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Bossier City, LA, Employer	)	

Appearances:
Bettye L. Richardson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 14, 2008 appellant filed a timely appeal from an October 10, 2007 nonmerit decision of the Office of Workers' Compensation Programs that denied his oral hearing request as untimely filed. He also requested review of a July 24, 2007 merit decision of the Office that denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on April 25, 2007; and (2) whether the Office properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On June 6, 2007 appellant, then a 23-year-old transitional rural carrier, filed a traumatic injury claim alleging that he developed a left shoulder injury in the performance of duty on April 25, 2007. He attributed his claimed injury to carrying a mailbag. The handwritten address

appellant provided was unclear. The Office interpreted appellant's address as 870 Browning Street. Appellant did not stop work.

In support of his claim, appellant provided a June 6, 2007 duty status report from Dr. James Dossey, a Board-certified occupational medicine specialist, diagnosing a left clavicle contusion and advising that he could work with restrictions. Dr. Dossey also provided a June 6, 2007 treatment note explaining that appellant had noticed a darkish discoloration of the skin over his left clavicle approximately two months prior to his examination and had since developed gradually increasing soreness and tenderness in the region. Dr. Dossey stated that appellant attributed his condition to carrying the strap of his mailbag over this left shoulder. On physical examination Dr. Dossey noted a darkish skin discoloration over the prominence of the left clavicle with some tenderness to palpation but no swelling. He found that appellant had full overhead range of motion with some pressure in the left clavicle when he raised his arms and that x-rays showed a ridge of calcification along the left clavicle. Dr. Dossey diagnosed left clavicle pain presumably due to pressure from the strap of appellant's mailbag, but possibly due to a preexisting condition. Dr. Dossey explained that he was unable to determine a cause for appellant's condition, but he expressed doubt that his injury was related to working as a letter carrier for only nine months.

By correspondence dated July 20, 2007, the employing establishment notified appellant of his potential entitlement to leave buyback. It addressed the letter to appellant at the following address 810 Browning Street. The Office received a copy of the correspondence on July 23, 2007.

By decision dated July 24, 2007, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence of record did not establish a causal relationship between his diagnosed condition and the accepted work-related events. It addressed the decision to appellant at 870 Browning Street.

By request dated August 25, 2007 and postmarked August 27, 2007, appellant requested an oral hearing. He informed the Office that it had mailed the July 24, 2007 decision to an incorrect address and clarified that his address was 810 Browning Street. Appellant acknowledged that he received the July 24, 2007 decision on August 9, 2007.

By decision dated October 10, 2007, the Office denied appellant's oral hearing request on the grounds that it was untimely filed. It also noted that appellant could have the issue in his case equally well addressed through the reconsideration process.

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

[1] 5 U.S.C. §§ 8101-8193.

conditions for which compensation is claimed are causally related to the employment injury.[2] 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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[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

It is not disputed that appellant carried a mailbag on April 25, 2007. However, the medical evidence does not establish that carrying a mailbag on April 25, 2007 caused or aggravated a diagnosed left shoulder injury.

In support of his claim, appellant submitted a June 6, 2007 duty status report and a treatment note dated the same day, both from Dr. Dossey. The duty status report diagnosed left clavicle contusion but did not proffer an opinion on causal relationship. The Board has held that a medical report that does not include an opinion on causal relationship is not probative on that

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

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

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.*

[6] *Conard 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).

issue.[10] Therefore, Dr. Dossey's June 6, 2007 duty status report does not suffice to establish that appellant sustained an injury in the performance of duty.

Dr. Dossey's June 6, 2007 treatment note also does not establish that appellant's diagnosed condition was related to an incident in the performance of duty. He noted a darkish skin discoloration and tenderness of the left clavicle and explained that appellant attributed his condition to his employment. Although appellant himself believed his condition to be related to employment, Dr. Dossey indicated that he was unable to determine the cause of his condition. He expressed doubt that appellant could have developed his condition after working for the employing establishment for only nine months and opined that the calcification of the left clavicle, noted on x-ray, might have been related to an undetermined preexisting condition. To meet his burden of proof, appellant must furnish a medical report explaining the nature of the relationship between his diagnosed condition and the carrying of his mailbag. Here, Dr. Dossey was unable to determine a cause for appellant's diagnosed condition and specifically expressed doubt that it was related to his employment. Therefore, the Board finds that appellant has not met his burden of proof in establishing a causal relationship between his diagnosed condition and the accepted employment incident.

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.[11] 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.[12] 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.[13]

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,[14] 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 authority in deciding whether to grant a hearing.[15] The Office's procedures, which require the

[10] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (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] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] *Id*. at § 10.616(a).

[14] 5 U.S.C. §§ 8101-8193.

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

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.[16]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for an oral hearing as untimely filed. Appellant requested an oral hearing in response to the Office's decision issued on July 24, 2007. His hearing request was dated August 25, 2007 and postmarked August 27, 2007, both more than 30 days after the July 24, 2007 decision was issued. The Board notes that appellant acknowledged receiving the decision on August 9, 2007 and thus that he had the opportunity to request an oral hearing within 30 days of the date of issuance of the decision.

The Board finds that appellant's assertion regarding the Office's sending of its July 24, 2007 decision to an incorrect address is insufficient to establish a timely hearing request. The Office relied on appellant's address of record as it appeared on his traumatic injury claim form. Moreover, appellant acknowledged receiving the decision on August 9, 2007, which was well within the 30-day period for requesting a hearing, despite the erroneous address. Any error by the Office in not taking notice of the discrepancy between the unclear address on appellant's claim form and the address as noted in the employing establishment correspondence that was received on July 23, 2007, is harmless since appellant still had an opportunity to timely request a hearing.

Although the Office determined that appellant's request was untimely, it nevertheless exercised its discretion by examining his request for an appeal. It determined that appellant's case would be best served by his submission of a request for reconsideration along with new supporting evidence. Accordingly, the Board finds that the Office acted within its discretion in denying appellant's hearing request as untimely.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on April 25, 2007 and that the Office properly denied his hearing request as untimely filed.

[16] *Teresa M. Valle*, 57 ECAB 542 (2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

ORDER

IT IS HEREBY ORDERED THAT the October 10 and July 24, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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