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

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| **P.L., Appellant** | ) | |
| **and** | ) | **Docket No. 08-941** |
| | ) | **Issued: August 19, 2008** |
| **U.S. POSTAL SERVICE, AIR MAIL CENTER, St. Paul, MN, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On February 12, 2008 appellant filed a timely appeal from the November 7, 2007 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

### ***ISSUE***

The issue is whether the Office properly denied appellant's August 7, 2007 request for reconsideration.

### ***FACTUAL HISTORY***

On December 12, 2005 appellant, then a 47-year-old postal ramp clerk, sustained an injury in the performance of duty: "I was parked behind aircraft at Gate E8 when my vehicle

was intentionally struck by a postal vehicle driven by a coworker." She did not stop work. The Office accepted her claim for cervicalgia and sprain/strain of the neck.[1]

On May 11, 2006 appellant filed a claim alleging a recurrence on January 17, 2006. She stated that her injury never resolved, that she continued to have neck and back pain, as well as swelling in the hands and throughout all of her joints after the December 12, 2005 injury. Appellant stated that the pain continued to increased through January and February 2007 and that she was diagnosed with rheumatoid arthritis.

In a decision dated August 10, 2006, the Office denied appellant's recurrence claim. The Office found that notes from her chiropractor did not indicate how the accepted injury was associated with a recurrence on January 17, 2006.

On August 7, 2007 appellant requested reconsideration. She stated that she was positive the December 12, 2005 collision triggered rheumatoid arthritis and caused upper back and neck pain and constant headaches; there was no other explanation. Appellant submitted a chronological narrative. She stated that her surgeon considered it extremely likely that rheumatoid arthritis was the result of an accident that occurred at work and that evidence from her rheumatologist stated her arthritis came on after trauma. With a request for reconsideration, appellant submitted progress notes from her chiropractor and general information on the nature of rheumatoid arthritis.

In a decision dated November 7, 2007, the Office denied appellant's request for reconsideration. It found that the evidence appellant submitted was either irrelevant or repetitive and therefore insufficient to warrant a reopening of her case.

## ***LEGAL PRECEDENT***

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[2] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[3]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

[1] OWCP File No. 102050404. The record indicates that appellant tore a meniscus in her left knee at work on October 30, 2005. OWCP File No. 102050051.

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.605 (1999).

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[5] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

Causal relationship is a medical issue,[7] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty,[9] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10]

## ***ANALYSIS***

Appellant filed her August 7, 2007 request for reconsideration within one year of the Office's August 10, 2006 merit decision denying her recurrence claim. Her request is therefore timely. The question is whether appellant's August 7, 2007 request meets at least one of the three standards for reopening her case.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. The Board also finds that the evidence she submitted did not constitute relevant and pertinent new evidence not previously considered by the Office.

Appellant provided a chronology and stressed her confident opinion that the December 12, 2005 work incident caused her rheumatoid arthritis. Causal relationship is

[4] *Id*. at § 10.606.

[5] *Id*. at § 10.607(a).

[6] *Id*. at § 10.608.

[7] *Mary J. Briggs*, 37 ECAB 578 (1986).

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

medical in nature and can be established only by probative medical evidence.[11] Appellant's lay opinion in the matter is not relevant.

Appellant did submit a number of progress notes from her chiropractor. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.[12] Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act, and any opinion he might give on causal relationship does not constitute competent medical evidence.[13] Even if appellant's chiropractor did diagnose a subluxation from x-ray, that would not render him competent to offer a professional opinion on rheumatoid arthritis, a subject outside the statutory recognition of chiropractic services.

Appellant stated that her surgeon considered it extremely likely that rheumatoid arthritis was the result of an accident that occurred at work and that evidence from her rheumatologist stated her arthritis came on after trauma. But her request for reconsideration contained no such medical opinions or reports. Appellant submitted instead general information on the nature of rheumatoid arthritis. Materials such as newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship, as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.[14] General information from the Arthritis Foundation cannot establish that appellant's motor vehicle collision on December 12, 2005 caused her to develop rheumatoid arthritis.

Because appellant's August 7, 2007 request for reconsideration does not meet at least one of the three standards for reopening her case, the Board finds that the Office properly denied that request. The Board will affirm the Office's November 7, 2007 decision.

## ***CONCLUSION***

The Board finds that the Office properly denied appellant's August 7, 2007 request for reconsideration.

[11] *Ausberto Guzman*, 25 ECAB 362 (1974).

[12] 5 U.S.C. § 8101(2).

[13] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

[14] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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