

In an attending physician's report dated January 8, 2007, Dr. Jonathan Cooper, an osteopath, diagnosed mild degenerative joint disease and acromioclavicular joint pain. He placed appellant on partial disability from January 8 through 29, 2007. In a duty status report of that date, Dr. Cooper limited appellant to lifting 0 to 10 pounds continuously and 20 pounds intermittently and stated that she could only reach above her right shoulder for one-half hour and could drive a vehicle for four hours. He indicated that the injury occurred while appellant was casing mail with her right hand on the top row of a case and she felt a sharp pain in the right shoulder and collar bone. In subsequent duty status reports dated January 31, February 22 and April 9, 2007, Dr. Cooper indicated that these restrictions should be continued.

Appellant submitted form reports from South Cedar Osteopathic Services dated January 8 through February 28, 2007 as authorized by Dr. Cooper. The January 8, 2007 report noted that she was treated for right shoulder pain. Appellant was driving a truck at work and had to do some unusual twists and turns to get in and out of the vehicle. When she returned to work that morning and was reaching above her head to place mail, she felt a pop in her right shoulder and some numbness in her right hand. Appellant was assessed with somatic dysfunction and received treatment.

On March 23, 2007 the Office noted that it initially accepted appellant's claim as a no time lost case as medical bills did not exceed \$1,500.00. The Office noted that, after reviewing appellant's file, it had determined that the evidence was not sufficient to establish her claim and indicated that further information was needed. In response, appellant submitted notes of physical therapy treatment dated from January 7 through March 30, 2007.

In a note received by the Office on April 27, 2007, appellant amended her claim to indicate that the date of injury was Saturday, January 6, 2007. On that date, Don Fulghum, a supervisor, decided to ride with her to evaluate her street performance. In order to accommodate him, appellant had to take a different truck. Appellant noted that the truck seat was too low and too close to the steering wheel, that she had to twist and pull her self up and out of the truck when making stops and this caused strain on her arm, shoulder and across her shoulder blade when opening and closing the door. She also noted that her lower back and legs were sore. When she returned to work on the following morning, she was still in pain. On January 8, 2007 while casing mail and reaching to the top row appellant heard and felt a pop. She noted that when she put another piece of mail in the top row, she felt a sharp stabbing pain which shot across her collar bone area.

By decision dated May 3, 2007, the Office denied appellant's claim. The Office found that, although appellant established that the incidents of January 6 and 8, 2007 occurred as alleged, she failed to establish that she sustained an injury, as alleged.

In a form dated June 4, 2007 and postmarked on June 5, 2007, appellant requested an oral hearing.

By decision dated July 11, 2007, the Office denied appellant's request for an oral hearing as it was untimely filed. The Office further reviewed appellant's request under its discretionary power but determined that the issue could be equally well addressed by requesting reconsideration. Accordingly, the Office denied appellant's request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that an 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/or specific condition for which compensation is claimed are causally related to the employment injury. 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.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to a specific condition of employment.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical evidence.⁶ 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 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.⁷ Neither the fact that a condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.

¹ 5 U.S.C. § 8122(a).

² *Id.*

³ *John J. Carlone*, 41 ECAB 345 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Katherine J. Friday*, 47 ECAB 591 (1996).

⁶ *Michael S. Mina*, 57 ECAB ____ (Docket No. 05-1763, issued February 7, 2006).

⁷ *Gary J. Watling*, 52 ECB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

ANALYSIS -- ISSUE 1

It is not disputed that appellant established that the incidents of January 6 and 8, 2007 occurred at the time, place and in the manner alleged. The issue, however, is whether she sustained an injury causally related to the accepted incident.

The Board finds that appellant has not submitted sufficient medical evidence to establish that she sustained an injury causally related to her federal employment. Dr. Cooper relayed that appellant complained of right shoulder pain which she noted occurred while driving a different work truck which caused her to perform unusual twists and turns to get in and out of the vehicle. He also noted that, on the morning of January 8, 2007, she felt a pop and pain in her right shoulder and numbness in her right hand when she was reaching above her head to place mail. Dr. Cooper diagnosed appellant with mild degenerative joint disease and acromioclavicular joint pain. However, he did not provide adequate rationale addressing how her conditions were caused by either of the accepted incidents. Dr. Cooper failed to explain how the work conditions of January 6 or 8, 2007 caused or aggravated appellant's degenerative joint disease. The medical notes from South Cedar Osteopathic Services showed that appellant was treated on these dates at Dr. Cooper's request. Her current complaints, were noted, but the reports do not provide any opinion with regard to causation. Appellant has not submitted medical evidence establishing how that the accepted employment incidents resulted in her diagnosed medical condition. She has failed to establish her claim.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act,⁹ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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."

The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹⁰ The regulations provide that a hearing is a review of an adverse decision by a hearing representative and a claimant could choose between two formats: an oral hearing or a review of the written record.¹¹ These regulations also provide

⁸ The Board notes that appellant submitted evidence after the issuance of the May 3, 2007 merit decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); see *Steven S. Saleh*, 55 ECAB 169 (2003).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ *Leona B. Jacobs*, 55 ECAB 753 (2004); *Ella M. Garner*, 36 ECAB 238 (1984).

¹¹ 20 C.F.R. § 10.615.

that the request for either type of hearing must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date the decision for which a hearing is sought.¹²

ANALYSIS -- ISSUE 2

The Office's merit decision was dated May 3, 2007. A claimant is not entitled to an oral hearing as a matter of right unless it is postmarked within 30 days of the issuance of the decision. The Office regulations state that the 30-day time limitation is based on the decision's issuance, not its receipt by a claimant.¹³ In computing the time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday.¹⁴ In this case, the thirtieth day following the issuance of the decision was Saturday, June 2, 2007. Therefore, the last day for filing appellant's request for an oral hearing would be Monday, June 4, 2007. As indicated by the postmark on the envelope, the request for a hearing was mailed on June 5, 2007. Since this is more than 30 days after the issuance of the May 3, 2007 decision, the Board finds that appellant is not entitled to a hearing as a matter of right.

Although appellant's request for an oral hearing was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.¹⁵ 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.¹⁶ There is no evidence of an abuse of discretion in this case.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on January 6, 2007. The Board further finds that the Office properly denied appellant's request for an oral hearing as untimely filed.

¹² 20 C.F.R. § 10.616.

¹³ 20 C.F.R. §10.616(a).

¹⁴ *John B. Montoya*, 43 ECAB 1148 (1992).

¹⁵ 20 C.F.R. §10.607(a).

¹⁶ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 11 and May 3, 2007 are affirmed.

Issued: February 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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