United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
	)	
and	)	**Docket No. 08-187**
	)	**Issued: June 9, 2008**
U.S. POSTAL SERVICE, MARTECH CARRIER ANNEX, Atlanta, GA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from an August 23, 2007 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for reconsideration without conducting a merit review. He also requested review of March 16 and June 25, 2007 merit decisions 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 merits of the claim.

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; and (2) whether the Office properly denied appellant's request for reconsideration without conducting a merit review.

FACTUAL HISTORY

On January 29, 2007 appellant, then a 31-year-old city letter carrier, filed a traumatic injury claim alleging that he noticed an orange discoloration on his hands while delivering mail on January 24, 2007. He stated that he washed his hands approximately seven times with no

results and concluded that something he had touched while working his route had caused a reaction. Appellant stopped work on January 25, 2007 but returned later the same day. The employing establishment controverted his claim.

On February 12, 2007 the Office requested additional information concerning appellant's claim.

By decision dated March 16, 2007, the Office denied appellant's claim on the grounds that the record did not establish that an incident occurred as alleged.

In an undated statement received into the record on March 22, 2007, appellant explained that he was delivering mail when he realized that his hands had an orange look and felt warm. He stated that he washed his hands several times, but this did not solve the problem. Appellant noted that, in fact, after washing his hands several times he noticed that the orange color had in fact gotten brighter. He stated that after discussing his condition with his supervisors he "clocked out" and sought medical attention. Appellant explained that, while delivering his route, he was exposed to mail, packages, his postal vehicle, and mailboxes on the street. He noted that his hands were fine before he left the station and that he was delivering mail on his route when he noticed the discoloration.

In a March 12, 2007 attending physician's report, Ashley Cleveland, a nurse practitioner, noted appellant's complaints of discoloration in the palms of his hands, but explained that the soles of his feet and the rest of his body were unaffected. She indicated that appellant's discoloration only affected exposed skin. Ms. Cleveland diagnosed headache and "contact or exposure to substance vs. allergic reaction." Appellant also provided two laboratory testing reports, dated January 26 and March 8, 2007, which did not note a diagnosis or discuss appellant's claimed injury.

On March 29, 2007 appellant requested reconsideration. He stated that the Office had incorrectly noted his name and that his supporting medical evidence was not received because of the mistake.

By decision dated June 25, 2007, the Office denied modification of its previous denial of appellant's claim on the grounds that, while appellant had established that the claimed events occurred as alleged in the performance of duty, the medical evidence provided did not establish that a specific diagnosed condition was causally related to the accepted incident.

Subsequent to the Office's June 25, 2007 decision, appellant submitted a March 14, 2007 report from Dr. Kimball Johnson, a Board-certified internist, who diagnosed discoloration of the palms bilaterally, headache and cough. Dr. Johnson explained that appellant initially presented in his office on January 24, 2007, complaining of an orange discoloration of his hands, at which time "labs were drawn out to rule out any etiology other than contact with an abrasive or poisonous substance." He noted that appellant had been at work and felt fine until he noticed his symptoms between noon and 2:00 p.m. Dr. Johnson concluded that appellant's symptoms indicated contact dermatitis causing a localized and systemic reaction. He noted that appellant's orange discoloration continued until March 12, 2007, and that appellant also reported new symptoms, including a burning sensation and scaling, during that time. Appellant also provided

laboratory reports from January 24, 2007, indicating that he had noticed a brown tint on his hands on that day and denied eating any beta carotene-rich products that day. The report diagnosed unspecified allergy, among other conditions.

On August 14, 2007 appellant requested reconsideration of the Office's previous decisions. With his reconsideration request, he provided an August 8, 2007 report from Dr. Johnson, who opined that appellant "had a local and systemic allergic reaction to an unknown substance while delivering mail at work." Dr. Johnson noted that appellant's symptoms included a distinct orange or brown discoloration, headache and cough, and diagnosed allergic contact dermatitis. He stated that laboratory results were consistent with an early allergic reaction.

By decision dated August 23, 2007, the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted was insufficient to warrant review of the prior decision.

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 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 or she 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

[1] 5 U.S.C. §§ 8101-8193.

[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.*

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

The Board finds that appellant has established that he noticed an orange discoloration in the palms of his hands while performing his normal work duties on January 24, 2007. However, appellant has not established that his duties or substances to which he was exposed while performing his duties caused or aggravated a specific diagnosed condition.[10]

In support of his claim, appellant submitted a March 12, 2007 attending physician's report from Ms. Cleveland. However, the Board notes that Ms. Cleveland is a nurse practitioner, not a physician. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence provided by a qualified physician.[11] Because a nurse practitioner is not a physician pursuant to the Act, Ms. Cleveland's reports are of no probative value in establishing that appellant's orange discoloration caused or aggravated a personal injury.[12] Accordingly, Ms. Cleveland's report is insufficient to establish that appellant's orange discoloration caused or aggravated a specific diagnosed condition. Appellant also provided January 26 and March 8, 2007 laboratory printouts noting diagnostic testing results. However, these reports are insufficient to establish the claim as they do not offer a physician's opinion on the cause of a specific diagnosed condition.[13]

Consequently, appellant did not meet his burden of proof as he did not provide reasoned medical evidence explaining why a diagnosed condition was caused or aggravated by workplace duties or exposures on January 24, 2007.

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[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).

[10] The Board notes that in support of his appeal, appellant submitted additional medical evidence. The Board, however, cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final merit decision. The Board's review is limited to the evidence in the case record at the time the Office made its final merit decision. 20 C.F.R. § 501.2(c).

[11] *See Paul E. Thams*, 56 ECAB 503, 509 (2005).

[12] *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[13] *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). Moreover, it is unclear whether the laboratory printouts were authored by a physician. *See supra* notes 11 and 12.

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 regulations provides guidance for the Office in using this discretion.[14] 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:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[15]

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.[16] 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.[17]

ANALYSIS -- ISSUE 2

The Board finds that the Office improperly denied appellant's request for reconsideration without conducting a merit review. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument. However, he did provide new and relevant evidence.

In support of his request for reconsideration, appellant submitted March 14 and August 8, 2007 reports from Dr. Johnson which had not been previously submitted. While the March 14, 2007 report does not provide support that appellant sustained an employment injury or condition, the August 8, 2007 report addressed causal relationship, stating that appellant "had a local and systemic allergic reaction to an unknown substance while delivering mail at work." The Board finds that because Dr. Johnson addressed causal relationship in a report that was not previously of record, his reports constitutes new and relevant evidence. Therefore, the Office improperly denied appellant's claim for recurrence of disability without conducting a merit review, as

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[14] 20 C.F.R. § 10.606(b)(2).

[15] *Id.*

[16] 20 C.F.R. § 10.608(b) (1999).

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

appellant met the third regulatory criterion by submitting new and relevant medical evidence. The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge her burden of proof.[18] The requirements pertaining to the submission of evidence in support of reconsideration only specifies that there be relevant and pertinent new evidence not previously considered by the Office.[19]

On remand, the Office should conduct a merit review of appellant's claim and examine the newly submitted evidence. After such further development as is deemed necessary, the Office shall issue an appropriate merit decision.

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. However, the Board also finds that the Office improperly denied appellant's request for reconsideration without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the June 25 and March 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed, and the August 23, 2007 decision of the Office is set aside and the case remanded for further action consistent with this decision.

Issued: June 9, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[18] *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[19] 20 C.F.R. § 10.606(b)(2)(iii).