United States Department of Labor
Employees' Compensation Appeals Board

M.A., Appellant	)	
and	)	**Docket No. 08-508**
	)	**Issued: June 11, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

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 December 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 2, 2007, as well as a November 6, 2007 decision denying reconsideration without merit review of the claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established an injury causally related to factors of his federal employment; and (2) whether the Office properly determined appellant's application for reconsideration was insufficient to warrant further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 28, 2007 appellant, then a 59-year-old modified mail handler, filed an occupational disease claim (Form CA-2) alleging that his trapeziometacarpal arthritis was causally related to his federal employment. On the claim form, he indicated that he had a prior

claim filed in 1990 accepted for trapeziometacarpal arthritis and that his current condition was causally related to repetitive motion. In a narrative statement, appellant indicated that in January 2007 he began to feel pain in his thumb and wrist. He stated that he had been working with damaged mail since 1995, and he believed the repetitive motion in his job had caused his current condition.

On February 13, 2007 Dr. Thomas Kiefhaber, an orthopedic surgeon, reported appellant had carpometacarpal (CMC) arthroplasty of both the right and left thumbs in 1990 or 1991. He provided results on examination and indicated that appellant had pain at the base of the right thumb. Dr. Kiefhaber stated that x-rays indicated a collapse of the CMC joint space. In a March 8, 2007 report, Dr. Kiefhaber stated that appellant was treated on February 13, 2007 for right thumb pain and "this was related to the trapezium metacarpal arthritis that he had in both thumbs." He stated that appellant was continuing to have pain for the same diagnosis as his original claim and "this is continued treatment for the same diagnosis."

In a decision dated May 2, 2007, the Office denied the claim for compensation. It found the medical evidence did not establish that the claimed medical condition resulted from the accepted work activities.

By letter dated October 15, 2007, appellant requested reconsideration. He submitted a June 4, 2007 report from Dr. Kiefhaber, who indicated that appellant had right thumb surgery in September 1992 and left thumb surgery in February 1993. Dr. Kiefhaber noted that appellant began having right thumb pain and x-rays showed the thumb metacarpal had subsided toward the scaphoid and there was crepitus with motion. Dr. Kiefhaber stated that appellant's current thumb pain "is a continuum of the trapezium metacarpal arthritis" appellant had dating back to 1990. He stated that appellant had abnormal contact between the thumb metacarpal and the scaphoid that "has been allowed by a stretching out of the surgical repair that was done many years ago."

In a decision dated November 6, 2007, the Office found that the request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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;

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[5] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury as a result of repetitive motion in his employment working with damaged mail since 1995. It is his burden of proof to submit medical evidence establishing a diagnosed condition causally related to the accepted employment factors. Appellant submitted February 13 and March 8, 2007 reports from Dr. Kiefhaber, who reported that appellant had right thumb pain that was related to his prior bilateral arthritis and represented continued treatment for the same diagnosis. This opinion is of diminished probative value to the issue of causal relationship as it fails to discuss the identified employment factor. Dr. Kiefhaber does not provide a complete history or a rationalized medical opinion between the diagnosed arthritis condition and any repetitive motion appellant performed at work with damaged mail. It is appellant's burden of proof to submit the medical evidence necessary to establish his claim. The Board finds that appellant did not meet his burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[7] 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."[8]

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

[3] *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[4] *See Robert G. Morris*, 48 ECAB 238 (1996).

[5] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Id.*

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.605 (1999).

interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[9]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet 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.[10]

ANALYSIS -- ISSUE 2

Appellant submitted a new medical report from Dr. Kiefhaber dated June 4, 1997. As noted the issue in this case is whether he has an arthritis condition causally related to repetitive motion at work since 1995. Dr. Kiefhaber reiterated his opinion that appellant's treatment in 2007 represents a "continuum" of his preexisting arthritis. He does not provide any new and relevant medical opinion to the claim in this case. Dr. Kiefhaber does not discuss the identified employment factor of repetitive motion at work. He refers generally to a "stretching out of the surgical repair" without discussing appellant's work duties or providing an opinion on causal relationship between a diagnosed condition and the work duties. Dr. Kiefhaber's report does not constitute relevant and pertinent evidence sufficient to warrant further merit review of the claim.

The Board finds that appellant did not 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 submit relevant and pertinent evidence not previously considered by the Office. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review of the claim.

CONCLUSION

The medical evidence of record is not sufficient to establish an injury causally related to the identified employment factors. In addition, appellant's application for reconsideration did not meet one of the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly denied merit review of the claim.

[9] *Id*. at § 10.606(b)(2).

[10] *Id*. at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6 and May 2, 2007 are affirmed.

Issued: June 11, 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