United States Department of Labor
Employees' Compensation Appeals Board

W.L., Appellant	)	
and	)	**Docket No. 08-1856**
	)	**Issued: February 5, 2009**
U.S. POSTAL SERVICE, CIVIC CENTER POST OFFICE, Oakland, CA, 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 June 23, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated October 1 and December 21, 2007 denying his claims for occupational disease and a period of disability and a March 24, 2008 nonmerit decision denying his request for a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim and the nonmerit denial of a merit review.

ISSUES

The issues are: (1) whether appellant established that he sustained a bilateral upper extremity condition in the performance of duty due to work factors from February 5, 2005 to January 18, 2007; (2) whether appellant established that he was totally disabled for work from July 24, 2007 causally related to accepted upper extremity conditions; and (3) whether the Office properly denied appellant's February 27, 2008 request for a merit review.

FACTUAL HISTORY

On November 26, 2006 appellant, then a 56-year-old modified letter carrier, filed a claim for recurrence of disability[1] (Form CA-2a) alleging that carrying mail from February 5, 2005 to January 18, 2007 aggravated accepted bilateral lateral epicondylitis and a right wrist sprain/strain sustained prior to February 3, 2005.[2]

In a January 22, 2007 letter, the Office advised appellant that as he alleged new work factors, it would develop the claim as one for occupational disease.[3] It noted the type of medical and factual evidence needed to establish his claim. The Office emphasized the importance of submitting a rationalized report from his attending physician explaining how and why work factors would cause the claimed condition.

Appellant submitted reports from Dr. Mark Hebrard, an attending Board-certified physiatrist, dated from January 18 to July 31, 2007. Dr. Hebrard diagnosed right lateral epicondylitis, right de Quervain's tendinitis and right carpal tunnel syndrome. He noted work restrictions against repetitive upper extremity activity and lifting more than five pounds. In an April 6, 2007 report, Dr. Robert Wagner, a Board-certified internist, noted appellant's account of lifting tubs of mail without a handcart on March 5, 2007, followed by right wrist pain. Dr. Wagner diagnosed a right wrist sprain and right lateral epicondylitis. He released appellant to regular duty.[4]

The employing establishment terminated appellant on July 24, 2007. On August 8, 2007 appellant filed a claim for compensation (Form CA-7) for the period July 24, 2007 and continuing. In an August 29, 2007 letter, the Office advised appellant of the medical evidence needed to establish his claim.

Appellant submitted job offers showing that he accepted light-duty positions on June 14 and September 21, 2005, with lifting limited to 40 pounds and limited use of the right arm. In a September 4, 2007 report, Dr. Hebrard related appellant's account that he was forced to retire. In a September 19, 2007 letter, Sonia Ortega, a union steward, asserted that management refused to accommodate appellant's work restrictions.

By decision dated October 1, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. It found that appellant submitted insufficient

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[1] Appellant filed a duplicate claim on February 7, 2007.

[2] The prior upper extremity claim was assigned File No. xxxxxx064, accepted for bilateral lateral epicondylitis and a right wrist/hand strain.

[3] In a March 8, 2007 decision, the Office denied continuation of pay from November 28, 2006 to January 12, 2007 as appellant claimed an occupational disease, not a traumatic injury. This claim is not before the Board on the present appeal.

[4] Appellant also submitted reports from Ellen Brennan, a nurse practitioner. The Board has held that treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under the Federal Employees' Compensation Act. *See* 5 U.S.C. § 8101(2); *Sedi L. Graham*, 57 ECAB 494 (2006); *Paul Foster*, 56 ECAB 208 (2004).

rationalized medical evidence supporting a causal relationship between the identified work factors and the claimed conditions. The Office further found that appellant had not established total disability for work from July 24, 2007 onward.

In an October 8, 2007 letter, appellant requested reconsideration. He submitted additional evidence.

In an October 4, 2007 letter, appellant contended that he refused a light-duty job offer made on March 1, 2007 as it was made on the last effective date. A copy of the job offer showed effective dates from February 8 to March 1, 2007. An official noted that appellant refused to sign the job offer on March 1, 2007. A May 16, 2007 Step B grievance settlement stated that appellant agreed to retire voluntarily or be terminated from the employing establishment.

In reports from June 14 to October 24, 2007, Dr. Hebrard noted appellant's continuing symptoms. He diagnosed right wrist tendinitis and right carpal tunnel syndrome. Dr. Hebrard stated in an October 4, 2007 report that he had not found appellant totally disabled for work for any period.

By decision dated December 21, 2007, the Office affirmed the previous decision on the grounds that the evidence submitted was insufficient to warrant modification. The Office found that appellant submitted insufficient medical evidence to establish causal relationship or a period of total disability.

In a February 21, 2008 letter, appellant requested reconsideration. He submitted December 5, 2007 and January 22, 2008 reports from Dr. Hebrard noting work restrictions. Dr. Hebrard repeated previous diagnoses, emphasizing that he never held appellant off work. Appellant also provided a February 8, 2008 letter from an employing establishment official stating that appellant was offered a light-duty job on March 1, 2007, the last effective date for the position.

By decision dated March 24, 2008, the Office denied merit review on the grounds that appellant's February 21, 2008 request and the evidence submitted did not raise substantive legal questions or include new, relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[5] 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 filed within the applicable time limitation; that an injury was sustained while 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

[5] 5 U.S.C. §§ 8101-8193.

employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.[8]

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained bilateral wrist conditions due to work factors from February 5, 2005 to January 18, 2007. He submitted repots from Dr. Hebrard, an attending Board-certified physiatrist, diagnosing right lateral epicondylitis, right de Quervain's tendinitis and carpal tunnel syndrome. Dr. Hebrard did not provide medical rationale explaining how and why work factors would cause the claimed conditions. Therefore, his opinion is insufficient to meet appellant's burden of proof in establishing causal relationship.[9]

Dr. Wagner, a Board-certified internist, noted in an April 6, 2007 report that appellant recalled the onset of right wrist symptoms after lifting mail on March 5, 2007. He diagnosed a right wrist sprain. However, Dr. Wagner did provide medical rationale explaining how or why lifting mail would cause the diagnosed condition. His opinion is therefore insufficient to establish causal relationship.[10]

The Board notes that appellant was advised by January 22, 2007 letter of the necessity of submitting medical evidence explaining how and why work factors would cause or contribute to

[6] *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[10] *Id.*

the claimed conditions. (R 27-26) He did not submit such evidence. Therefore, appellant failed to meet his burden of proof in establishing causal relationship.

LEGAL PRECEDENT -- ISSUE 2

To establish a causal relationship between a claimed period of disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[11] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[12] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant s diagnosed 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.[13]

ANALYSIS -- ISSUE 2

Under a previous claim, the Office accepted that appellant sustained bilateral lateral epicondylitis and a right wrist sprain/strain due to work factors on or before February 3, 2005. Appellant claimed wage-loss compensation for total disability from July 24, 2007 onward due to sequelae of those conditions. By decisions dated October 1 and December 21, 2007, the Office denied compensation for the claimed period of disability.

Dr. Hebrard submitted reports from January 18 to October 24, 2007 noting appellant's upper extremity symptoms and prescribing work limitations. He stated in an October 4, 2007 report that he did not find appellant totally disabled for work for any period. Similarly, Dr. Wagner, a Board-certified internist, released appellant to full duty as of April 6, 2007. As Dr. Hebrard and Dr. Wagner did not find appellant totally disabled for work for the claimed period, their opinions are insufficient to meet appellant's burden of proof.

Consequently, appellant has failed to establish the claimed period of total disability, as he submitted insufficient rationalized medical evidence establishing total disability for work for any period due to the accepted injuries.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[14] section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a

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[11] *Manuel Gill*, 52 ECAB 282 (2001).

[12] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000).

[14] 5 U.S.C. § 8128(a).

claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit 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]

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[17] He need only submit relevant, pertinent evidence not previously considered by the Office.[18] 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.[19]

ANALYSIS -- ISSUE 3

The Office denied appellant's claims for occupational disease and wage-loss compensation by October 1, 2007 decision, affirmed by December 21, 2007 decision. Appellant requested reconsideration by letter dated February 21, 2008. He submitted December 5, 2007 and January 22, 2008 reports from Dr. Hebrard reiterating previous findings. Appellant also provided an employing establishment letter highly similar to previously submitted evidence regarding the date of a light-duty job offer. The Board has held that evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.[20] The duplicative nature of this evidence does not require reopening the record for further merit review.

Appellant's February 21, 2008 letter and the evidence submitted did not establish that the Office improperly refused to reopen his claim for a review of the merits under section 8128(a) of the Act. He 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. Therefore, the Office properly denied appellant's request for a merit review.

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[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b). *See also T.E.*., 59 ECAB ___ (Docket No. 07-2227, issued March 19, 2008).

[17] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[18] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

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

[20] *Denis M. Dupor*, 51 ECAB 482 (2000).

CONCLUSION

The Board finds that appellant did not establish that he sustained upper extremity conditions in the performance of duty due to work factors from February 5, 2005 to January 18, 2007. The Board further finds that appellant did not establish a period of total disability for work from July 24, 2007 onward. The Board further finds that the Office properly denied appellant's February 21, 2008 request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office dated March 24, 2008, December 21 and October 1, 2007 are affirmed.

Issued: February 5, 2009
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