

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

K.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Shreveport, LA, Employer**

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**Docket No. 08-1839
Issued: January 23, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 3, 2008 merit decision and a May 6, 2008 decision denying her request for a review of the written record as untimely. 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 her federal employment; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On December 7, 2007 appellant, then a 51-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained wrist pain and joint pain as a result of casing and carrying mail. In a January 3, 2008 statement, she indicated she worked two hours

per day casing mail and six hours per day carrying mail. Appellant stated she had bilateral thumb pain for approximately two years.

With respect to medical evidence, appellant submitted a form report dated March 19, 2007 from Dr. Marion Milstead, an orthopedic surgeon, who diagnosed left de Quervain's tenosynovitis and bilateral carpometacarpal (CMC) osteoarthritis of the thumbs. In a brief narrative report of the same date, Dr. Milstead indicated that appellant was still having pain in the thumb.

By decision dated March 3, 2008, the Office denied the claim for compensation. It found the medical evidence insufficient to establish the claim.

In a letter postmarked April 3, 2008, appellant requested a review of the written record by the Office's Branch of Hearings and Review. By decision dated May 6, 2008, the Branch of Hearings and Review determined the request to be untimely and therefore she was not entitled to review as a matter of right. The Branch of Hearings and Review further exercised its discretion by considering appellant's request and determined that the issue in this case could equally well be addressed by requesting reconsideration from the Office and submitting new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her 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; 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

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).

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).

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 identified casing and carrying mail as the employment factors contributing to an injury. It is her burden to submit rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors. The evidence before the Office at the time of the March 3, 2008 merit decision did not contain a medical report with a rationalized medical opinion on causal relationship.⁷ Dr. Milstead provided a diagnosis of left de Quervain's tenosynovitis and bilateral CMC osteoarthritis, without providing a complete medical history or an opinion on the causal relationship of the condition to appellant's employment. As noted, a rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale. In the absence of rationalized medical opinion evidence, the Board finds that appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary."⁸ Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁹ The regulations provide that a request for a hearing or review of the written record must be made within 30 days, as determined by the postmark or other carrier's date marking, of the date of the decision.¹⁰

ANALYSIS -- ISSUE 2

In the present case, appellant's request for a review of the written record was postmarked April 3, 2008. The Office decision was dated March 3, 2008, and the 30-day period for a timely request expired on April 2, 2008. Since the request for a review of the written record was made more than 30 days after the Office decision, appellant is not entitled to a review of the written record as a matter of right.

⁶ *Id.*

⁷ There was new medical evidence submitted after the March 3, 2008 decision and on appeal to the Board. The jurisdiction of the Board is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁸ 5 U.S.C. § 8124(b)(1).

⁹ 20 C.F.R. § 10.615.

¹⁰ 20 C.F.R. § 10.616(a).

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.¹¹ It 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.¹² There is no evidence of an abuse of discretion in this case.

CONCLUSION

Appellant did not meet her burden of proof to establish an injury causally related to identified factors of her federal employment. The request for a review of the written record was not submitted within 30 days and the Office properly exercised its discretionary authority in denying the request.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 6, 2008 and March 3, 2008 is affirmed.

Issued: January 23, 2009
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

¹¹ See *Cora L. Falcon*, 43 ECAB 915 (1992).

¹² *Id.*