

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

L.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL, Employer**

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**Docket No. 08-2247
Issued: July 9, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2008 appellant filed a timely appeal from the January 7, May 29 and July 16, 2008 merit decisions of the Office of Workers' Compensation Programs, which denied compensation for appellant's right shoulder. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board also has jurisdiction to review the Office's August 6, 2008 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether appellant's right shoulder condition is causally related to her federal employment; and (2) whether the Office properly denied her July 13, 2008 request for reconsideration.

FACTUAL HISTORY

On March 20, 2002 appellant, then a 48-year-old flat sorting machine clerk, filed a claim alleging that her left and right wrist tendinitis was a result of repetitive motion, heavy lifting, pulling, dispatching and keying at work for 8 to 12 hours a day, five to seven days a week. The

Office accepted her claim for bilateral repetitive trauma disorder. It later expanded its acceptance to include left shoulder tendinitis or bursitis with arthroscopy on July 16, 2004 and bilateral carpal tunnel syndrome with surgical releases.

On February 7, 2005 Dr. Eugene P. Lopez, appellant's orthopedic surgeon, noted that he treated appellant's left shoulder "and it feels great." He stated, however, that appellant now had an identical problem on the right "all work related." After describing appellant's condition on physical examination, he diagnosed: "As stated above, work related."

On May 8, 2006 Dr. Richard H. Sidell, Jr., an orthopedic surgeon and Office referral physician, noted that, on reviewing appellant's records, the right shoulder was not documented as a complaint until after the left shoulder surgery. Appellant stated that her right shoulder complaints, which began as a more minor pain, had increased over the last seven to eight months, becoming quite problematic. Dr. Sidell noted, however, that she had not worked for 24 months. As the onset of pain on the right was at least many months after appellant had already ceased working due to her left shoulder problem, he concluded that there was no apparent connection between the pain in the right shoulder and appellant's work activity. Further, because the findings were primarily subjective, it was his opinion that appellant should be able to work in the capacity of a sorter with the possible exception of avoiding repetitive use of the upper extremities above the shoulder. "I see no reason that [appellant] could not be back to work with this being her only required modification."

The Office referred appellant, together with a statement of accepted facts and a copy of the medical record to Dr. Paul D. Belich, a Board-certified orthopedic surgeon, to resolve a conflict on appellant's ability to work.

On November 21, 2006 Dr. Belich related appellant's history, complaints and findings on examination. He reviewed appellant's extensive medical records and diagnosed, among other things, chronic rotator cuff tendinitis and right shoulder pain. Dr. Belich concluded that appellant should be able to return to work as a flat sorting machine clerk without any work above the chest or shoulder level involving either upper extremity. He noted that appellant's right shoulder problems were present for quite a while, but their intensity did not increase to any significant level until after her left shoulder was operated on. According to the records Dr. Belich reviewed, the lag time was anywhere from four to seven months. He observed: "In an individual who has not worked for over two years, I would not expect that the mild rotator cuff tendinitis that was diagnosed on the magnetic resonance imaging scan (MRI) scan would continue to be a problem and should have resolved with conservative treatment at this point."

An Office medical adviser reviewed the record and reported that appellant had mild impingement-type symptoms in the right shoulder, but her condition should not be considered work related for the reasons cited by Drs. Sidell and Belich.

In a decision dated June 18, 2007, the Office denied compensation and medical treatment for appellant's right shoulder condition. It found that the weight of the medical evidence established that her right shoulder condition was not causally related to the accepted work injury.

Appellant requested an oral hearing before an Office hearing representative, which was held on October 23, 2007. On that same date, Dr. Lopez wrote: “[Appellant] has been under my care for multiple problems since [April] 5[,] 2004. We discussed knees, shoulders and wrists at that initial visit, treating one set of problems at a time.” The record shows that Dr. Lopez saw appellant on April 5, 2004 for left shoulder and bilateral knee complaints.

In a decision dated January 7, 2008, the hearing representative affirmed the denial of compensation for appellant’s right shoulder. The hearing representative noted that Dr. Lopez’s opinion was unrationalized as he simply referred to the right shoulder condition as being work related. The hearing representative also noted that the Office referred the case to Dr. Belich to resolve a conflict on appellant’s ability to work, not to resolve whether her right shoulder condition was causally related to her federal employment. The hearing representative found that the medical evidence was not sufficient to meet appellant’s burden of proof to establish that she sustained a right shoulder injury causally related to her federal employment.

Appellant requested reconsideration, and submitted notes from Dr. Lopez and older treatment notes relating to her wrists, left knee and left shoulder. On May 29, 2008 the Office reviewed the merits of her claim and denied modification of its prior decision.

Appellant again requested reconsideration and submitted a June 5, 2008 report from Dr. Lopez, who stated that her conditions, including her right shoulder condition, were “all work-related conditions.” On July 16, 2008 the Office reviewed the merits of her claim and denied modification of its prior decision.

On July 13, 2008 appellant requested reconsideration but submitted no evidence or argument with her request. The Office received this request on July 24, 2008. In a decision dated August 6, 2008, it denied this request on the grounds that appellant’s request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ An employee seeking compensation under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

¹ 5 U.S.C. § 8102(a).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

ANALYSIS -- ISSUE 1

To support her claim that her right shoulder condition was causally related to her federal employment, appellant submitted reports and notes from her orthopedic surgeon, Dr. Lopez, who described or labeled her right shoulder condition as work related, but he never offered a rationalized opinion on the issue of causal relationship. Dr. Lopez did not offer a sound and logical medical explanation, based on a proper factual and medical background of how appellant's specific duties as a flat sorting machine clerk caused or at least aggravated her diagnosed right shoulder condition. Medical conclusions unsupported by rationale are of little probative or evidentiary value.⁷

The Office referral physicians found no causal relationship for the right shoulder to this claim. Dr. Sidell, an orthopedic surgeon, reviewed appellant's records and noted no documentation of a right shoulder complaint until after the July 16, 2004 arthroscopy on the left shoulder. Appellant reported that her right shoulder problem began as a more minor pain and became quite problematic in the last seven or eight months. But she had not worked in 24 months. Because the onset of pain on the right was at least many months after appellant had already ceased working due to her left shoulder problem, Dr. Sidell saw no apparent connection between the pain in the right shoulder and appellant's previous work activity. Dr. Belich, the other orthopedic surgeon, agreed. In an individual who has not worked for over two years, he would not expect that appellant's mild rotator cuff tendinitis would continue to be a problem. It should have resolved, Dr. Belich believed, with conservative treatment. The report of his is informative but does not have the special weight of the evidence normally given to referee physicians because the report does not address the question of causal connection of the right shoulder to this claim. Dr. Belich addresses whether appellant can return to work with limitations.

Dr. Lopez wrote on October 23, 2007 that appellant had been under his care since April 5, 2004 for multiple problems. "We discussed knees, shoulders and wrists at that initial

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

visit, treating one set of problems at a time.” The Board has reviewed the medical records from April 5, 2004 and can find no discussion of a right shoulder problem or any plan to treat the right shoulder at a later time. Medical attention is directed to the knees, particularly the right knee and to the left shoulder. The Board notes a December 16, 2003 report that mentions right shoulder tendinitis, but this is not sufficient to suggest causal relationship.

Because appellant has not submitted a well-reasoned medical opinion explaining how her right shoulder condition is causally related to her federal employment, she has not met her burden to establish the essential element of causal relationship. The Board will therefore affirm the Office decisions denying compensation benefits for the right shoulder.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁸ 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.”⁹

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 interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁰

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹¹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets 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.¹²

ANALYSIS -- ISSUE 2

Appellant’s July 13, 2008 request for reconsideration was a bare request, unaccompanied by any evidence or argument. The request did not show that the Office erroneously applied or

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.605 (1999).

¹⁰ *Id.* at § 10.606.

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608.

interpreted a specific point of law, did not advance a relevant legal argument not previously considered by it and did not contain evidence that constituted relevant and pertinent new evidence not previously considered by the Office. Because this request did not meet at least one of the three standards for obtaining a merit review of her case, the Board finds that the Office properly denied reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her right shoulder condition is causally related to her federal employment. The Board also finds that the Office properly denied appellant's July 13, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 6, July 16, May 29 and January 7, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 9, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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