

FACTUAL HISTORY

On or about January 21, 2008 appellant, then a 40-year-old letter carrier, filed a claim alleging that on January 16, 2008 she sustained an injury in the performance of duty when her postal vehicle was struck from behind. She described the nature of her injury as a very sore neck, lower back, hip and arms. A supervisor indicated that appellant was in the performance of duty.

On January 31, 2008 the Office advised appellant what evidence she needed to submit to establish her claim for benefits:

“In further consideration of your claim you should arrange to submit an attending physician’s report that includes dates of examination and treatment; thorough history of injury given by you to the physician; detailed description of findings, including definitive diagnosis; and the physician’s opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. **This explanation is crucial to your claim. You may wish to provide your treating physician with a copy of this letter.**” (Emphasis in the original.)

The Office received several medical reports. A hospital report dated January 16, 2008 noted appellant’s history and findings on examination. The impression was neck pain and back pain. On January 17, 2008 Dr. Linda M. Bessert, a Board-certified family practitioner, reported that appellant was unable to work because of injuries. On January 22, 2008 she reported that appellant was unable to return to work due to injury. On January 31, 2008 Dr. Bessert reported that appellant was seen for injuries sustained on January 16, 2008. “Due to persistent symptoms, she is unable to return to work until February 4, 2008.”

In a decision dated March 13, 2008, the Office denied appellant’s claim for compensation. It found that the work incident occurred as alleged, but that appellant submitted no medical evidence with a firm diagnosis of any condition resulting from the collision or with a physician’s opinion explaining how the collision caused an injury.

Appellant requested reconsideration on April 1, 2008. She submitted an April 2, 2008 report from Dr. Bessert who stated that appellant was involved in a car accident while delivering mail on January 16, 2008 and was seen for neck and back pain on January 22, 2008. Dr. Bessert related the history of the collision and appellant’s medical care and progress.

In a decision dated April 24, 2008, the Office denied appellant’s request for reconsideration. It found that Dr. Bessert’s April 2, 2008 report was cumulative and that other evidence received apart from appellant’s request was duplicative of evidence previously received.

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 benefits 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

Causal relationship is a medical issue,³ 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

The Office does not dispute that appellant was involved in a motor vehicle collision on January 16, 2008, nor does the Office dispute that appellant was in the course of her federal employment. Appellant has met her burden to establish that she experienced a specific event or incident occurring at the time, place and in the manner alleged. The question that remains is whether this incident caused an injury.

Causal relationship is a medical issue, so appellant must address it with the right kind of medical evidence. The Office explained what evidence was necessary on January 31, 2008. The Office emphasized that it was crucial to appellant's claim that her physician offer a definitive diagnosis and an opinion, supported by medical rationale, explaining how the work incident caused or aggravated that injury.

Appellant did not submit this evidence. The January 16, 2008 hospital report noted neck and back pain but identified no anatomical pathology to account for the pain. Dr. Bessert, the specialist in family medicine, stated that appellant sustained an injury on January 16, 2008, but

¹ 5 U.S.C. § 8102(a).

² *E.g., John J. Carlone*, 41 ECAB 354 (1989).

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).

she offered no clearer diagnosis. As a practical matter, the Office has to know what medical condition it is accepting before it can authorize appropriate treatment or determine whether the condition has resolved. It must know whether appellant's pain extends from an acute cervical or lumbosacral strain or sprain, a herniated disc, an aggravation of degenerative joint disease, or some other specific physical pathology. Without a firm diagnosis, no injury is established.

Appellant also did not submit a physician's medical explanation of how the January 16, 2008 incident caused an identified physical condition. Dr. Bessert submitted several disability notes. She stated that appellant sustained an injury on January 16, 2008. Dr. Bessert offered no opinion, much less any sound medical reasoning, on how the January 16, 2008 incident caused a diagnosed medical condition. Because the medical opinion evidence fails to establish that appellant sustained an injury on January 16, 2008, she has not met her burden of proof. The Board will affirm the Office's March 13, 2008 decision to deny her claim.

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.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 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.⁹

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹⁰ 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.¹¹

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.605.

⁹ *Id.* at § 10.606.

¹⁰ *Id.* at § 10.607(a).

¹¹ *Id.* at § 10.608.

ANALYSIS -- ISSUE 2

Appellant filed her April 1, 2008 request for reconsideration within one calendar year of the Office's March 13, 2008 decision to deny her claim. Her request is therefore timely. But the request does not meet at least one of the three standards for obtaining a merit review of appellant's case. Appellant's request does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Instead she submitted an April 2, 2008 report from Dr. Bessert.

Dr. Bessert noted symptoms of pain, spasm, loss of motion, radiculopathy. She again offered no firm diagnosis of appellant's medical condition. Dr. Bessert again stated that appellant was involved in a car accident on January 16, 2008 without explaining how this accident caused a specific anatomical pathology.

Because this evidence was cumulative and did not address the deficiencies the Office found in its March 13, 2008 decision, the Board finds that it did not constitute relevant and pertinent new evidence not previously considered by the Office. As appellant's request for reconsideration did not meet at least one of the three standards for obtaining a merit review of her claim, the Board will affirm the Office's April 24, 2008 decision to deny reconsideration.

CONCLUSION

The Board finds that the medical opinion evidence fails to establish that appellant sustained an injury in the performance of duty on January 16, 2008. No physician has offered a firm diagnosis of appellant's condition or a sound medical explanation of causal relationship. The Board also finds that the Office properly denied appellant's April 1, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the April 24 and March 13, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 16, 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