

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

Y.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Troy, MI, Employer**

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**Docket No. 09-115
Issued: March 9, 2009**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated May 19, 2008 denying her claim for compensation. She also filed a timely appeal from the September 18, 2008 nonmerit decision denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained de Quervain's tenosynovitis causally related to factors of her federal employment; and (2) whether the Office properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On February 25, 2008 appellant, then a 42-year-old small parcel bundle sorter machine clerk, filed an occupational disease claim alleging that she suffered from de Quervain's tenosynovitis as a result of her federal employment. In an accompanying statement, she

indicated that she first noticed her condition around May 2007, detailed her medical treatment and work restrictions and described her work duties. The employing establishment controverted the claim, noting that as of November 29, 2007 appellant had a restriction of five hours of work a day, with three hours being light duty with no heavy lifting over 10 pounds.

In further support of her claim, appellant submitted a November 29, 2007 form signed by Dr. Carlos M. Villafane, a Board-certified surgeon specializing in surgery of the hand, stating that appellant could do no heavy lifting and could work light duty three hours a day. She also submitted a return to work slip dated February 15, 2008 and signed by Dr. V. Darian, a Board-certified surgeon specializing in surgery of the hand, indicating that appellant could not work from March 14 through April 24, 2008, placing her on light duty from April 14 through June 16, 2008 and stating that she may resume her full work duties on June 17, 2008.

By letter dated February 29, 2008, the Office informed appellant that she had not submitted information sufficient to establish her claim for compensation as there was no medical evidence providing a physician's diagnosis of a wrist condition or a physician's opinion explaining how the wrist condition was caused or aggravated by her federal employment.

In response, appellant submitted an October 31, 2007 report by Dr. Dace Zvirbulis, a Board-certified orthopedic surgeon, indicating that he saw appellant for left hand pain and numbness. Dr. Zvirbulis assessed her with C7 radiculopathy and noted some clinical signs of cervical myelopathy with bilateral hyperreflexia in the upper and lower extremities. He referred appellant for neurosurgery. X-rays conducted on January 29, 2008, were interpreted by Dr. J. Bouffard, a Board-certified anatomic, clinical and neuropathologist, as evincing bilateral metallic fragments in the hands and in the left wrist which likely represent a previous injury, no acute fracture or dislocation of and right hands and wrists; and bilateral thumb carpometacarpal degenerative disease. Further x-rays taken on February 7, 2008 were interpreted by Dr. Bouffard as showing asymmetric, left greater than right, de Quervain's disease; unilateral left radioscaphoid ganglion cyst; and bilateral radiocarpal effusion and synovitis. In a February 8, 2008 report, Dr. Norman J. Rotter, a Board-certified neurosurgeon, noted de Quervain's tenosynovitis of the left wrist and possibly of the right wrist as well. In a February 15, 2008 report, Dr. Darian assessed appellant with bilateral de Quervain's and bilateral arthritis of her thumb. Appellant also submitted an operative report by Dr. Darian, noting her March 14, 2008 surgery for release left de Quervain's tenosynovitis and postoperative patient discharge instructions. In an April 11, 2008 report, Dr. Darian noted that appellant was given a script for physical therapy due to pain and was given a note for two more weeks of work.

By decision dated May 19, 2008, the Office denied appellant's claim as the medical evidence did not demonstrate that the claimed medical condition was related to the established work events.

On August 10, 2008 appellant requested an oral hearing. By decision dated September 18, 2008, the Office denied her claim for a hearing as it was untimely filed. It further reviewed appellant's request and denied the hearing as it found that the issue could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation 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,² including that she is an "employee" within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS -- ISSUE 1

In the instant case, there is no dispute that appellant established factors of her employment that could have caused de Quervain's disease. Furthermore, Drs. Bouffard, Rotter and Darian all note evidence of de Quervain's tenosynovitis. However, the Board finds that there is no rationalized medical opinion in the record linking appellant's de Quervain's tenosynovitis to factors of her federal employment. Drs. Villafane and Darian note restrictions and work limitations but do not attribute them to factors of appellant's federal employment. Similarly, Dr. Zvirbulis noted clinical signs of cervical myelopathy with bilateral hyperreflexia and Dr. Bouffard reported objective evidence of de Quervain's disease based on x-ray results. However, neither physician related these findings to appellant's employment factors. Although there is evidence why appellant believes that her de Quervain's tenosynovitis is related to her federal employment, the Board finds that no physician of record opined, with supporting medical rationale, that appellant's de Quervain's tenosynovitis was causally related to her federal employment.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.⁹ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, states whether the employment injury caused or aggravated appellant's diagnosed conditions and presents medical rationale in support of his or her opinion.¹⁰ As no physician provided a rationalized medical opinion linking appellant's de Quervain's disease to her federal employment, the Office properly denied appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides in pertinent part as follows:

"Before review under section 8128(a) of this title, 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 his claim before a representative of the Secretary."¹¹

The claimant can choose between two formats: an oral hearing or a review of the written record.¹² The requirements are the same for either choice.¹³ The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings or reviews

⁹ *Donald W. Long*, 41 ECAB 142 (1989).

¹⁰ *Id.*

¹¹ 5 U.S.C. §§ 8101-8193, § 8124(b)(1).

¹² 20 C.F.R. § 10.615.

¹³ *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

of the written record. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking¹⁴ and before the claimant has requested reconsideration.¹⁵ However, when the request is not timely filed or when reconsideration has previously been requested, the Office may within its discretion grant a hearing or review of the written record, and must exercise this discretion.¹⁶

ANALYSIS -- ISSUE 2

Appellant's request for an oral hearing was dated August 10, 2008, more than 30 days after the Office's May 19, 2008 decision. Therefore, her request for an oral hearing was not timely and she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review exercised its discretion in denying appellant's request for an oral hearing by finding that her claim could proceed through the reconsideration process with the submission of evidence not previously considered. The Branch of Hearings and Review did not abuse its discretionary authority in denying appellant's request for a hearing.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained de Quervain's tenosynovitis causally related to factors of her federal employment. The Board further finds that the Office properly denied her request for an oral hearing.

¹⁴ 20 C.F.R. § 10.616(a). *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹⁵ *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 18 and May 19, 2008 are affirmed.

Issued: March 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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