

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

E.C., Appellant)

and)

U.S. POSTAL SERVICE, LA COSTA STATION,)
Carlsbad, CA, Employer)

**Docket No. 08-2228
Issued: May 15, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 12, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated April 14, 2008 denying her claim for compensation, and a May 12, 2008 decision denying her request for reconsideration without a merit review. 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 met her burden of proof to establish that she sustained an occupational injury in the performance of duty; and (2) whether the Office properly denied appellant's reconsideration request without a merit review.

FACTUAL HISTORY

On February 13, 2008 appellant, then a 45-year-old box clerk, filed an occupational disease claim alleging that she reinjured her left and right forearm, right shoulder, lower back

and neck due to repetitive lifting over her head. She first realized her condition on March 5, 2004. Appellant did not stop work.

Appellant submitted a February 14, 2008 work restriction form of Dr. Laura Todoroff, an osteopath and Board-certified physiatrist, who recommended limited duty with no excessive or repeated bending, pulling or pushing. Dr. Todoroff also restricted lifting to 10 pounds and limited overhead lifting. She diagnosed musculoligamentous injury to the cervical, thoracic and lumbar spine.

On February 26, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional evidence. In particular, it requested factual evidence identifying the job activities that contributed to appellant's condition as well as a medical report that provided a diagnosis and explanation of how the activities contributed to the condition.

Appellant submitted a February 14, 2008 report of Dr. Todoroff in which she noted appellant's complaint of pain in the neck, shoulders and mid-back. Dr. Todoroff also noted that appellant's job duties required throwing mail, unloading trucks, pulling down and passing out mail and breaking down mail. She indicated that appellant's lumbar spine had full range of motion and her cervical spine had 50 percent range of motion. Dr. Todoroff advised no repetitive pulling, pushing or bending as well as restricted overhead reaching and lifting over 10 pounds.

In a decision dated April 14, 2008, the Office denied appellant's claim for compensation finding that the evidence was insufficient to establish that the events occurred as alleged. It indicated that there was no factual evidence on file demonstrating that appellant performed repetitive overhead lifting activities. The Office further found there was no medical evidence that provided a diagnosis which could be connected to the claimed events.

On April 26, 2008 appellant requested reconsideration. In an April 26, 2008 letter, she stated that her condition was a reinjury, which she had first filed on September 24, 2003. Appellant noted that the reinjury had occurred over a period of time and that on February 13, 2008 she experienced extreme pain in her shoulder and neck due to repetitive pushing, pulling, bending and lifting over her head or shoulders. She further noted that she has worked in her current position for 21 years and continued to work in that position under light duty. Appellant also submitted photographs of the type of equipment that required her to push, pull, bend and lift over her shoulders or head. She indicated that she was attaching copies of doctors' reports containing a diagnosis of her condition. However, no medical records accompanied appellant's letter.

In a May 12, 2008 decision, the Office denied appellant request for reconsideration without a merit review.

LEGAL PRECEDENT -- ISSUE 1

In a claim for an occupational disease, the time limitations of the Act begin to run when the employee becomes aware, or reasonably should have been aware, of a possible relationship,

by cause or aggravation, between his disease and his employment. If his exposure to the implicated employment factors extends beyond the date of such awareness, the time limitations begin to run on the last date of such exposure.¹

An employee seeking benefits under the Federal Employees' Compensation Act 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 employment injury. 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.²

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) 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

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.⁴ It is the claimant's responsibility to prove that work was performed under these specific conditions at the time, in the manner and to the extent alleged.⁵

ANALYSIS -- ISSUE 1

The Board finds that factors of employment have been established. In the Office's April 14, 2008 decision, it found that the evidence was insufficient to establish that the events occurred as alleged as there was no factual evidence on file demonstrating that appellant performed repetitive overhead lifting activities. However, the record contains Form CA-2, in

¹ *Franklin D. McGuire*, 27 ECAB 317 (1976).

² *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ *Effie Morris*, 44 ECAB 470 (1993).

⁵ FECA Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993) (in occupational disease cases, the claimant must submit evidence to identify fully the particular work conditions alleged to have caused the disease); *see also L.B.*, 59 ECAB ____ (Docket No. 07-1748, issued December 18, 2007) (stating that the claimant has the burden of proof to identify employment factors believed to have caused or aggravated a claimed employment-related condition).

which appellant clearly indicated that her alleged injury was due to repetitive overhead lifting. There is no evidence from the employing establishment indicating that overhead lifting was not a job duty. Furthermore, Dr. Todoroff noted that appellant's job duties included throwing mail, unloading trucks, pulling down and passing out mail and breaking down mail. Therefore, the Board finds that appellant has identified an employment factor, overhead lifting, as the cause of her claimed condition. However, the medical evidence does not support that appellant's condition is causally related to the overhead lifting.

In a February 14, 2008 report, Dr. Todoroff noted appellant's complaint of neck, shoulder and mid-back pain. She also noted that appellant's job required her to throw mail, unload trucks and pull and break down mail. However, this report did not address whether appellant's employment duties caused or aggravated her condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ In a work restriction form of the same date, Dr. Todoroff diagnosed musculoligamentous injury to the cervical, thoracic and lumbar spine. She recommended that appellant work limited duty without excessive or repeated bending, pulling or pushing. Dr. Todoroff also restricted lifting to 10 pounds and limited overhead lifting. Although she provided a diagnosis, she did not address how appellant's diagnosed condition was caused or aggravated by repetitive overhead lifting. As noted, a medical report without an opinion on causal relationship is of limited probative value.

Appellant did not submit any other medical evidence, prior to the issuance of the Office's April 14, 2008 decision, supporting that repetitive overhead lifting caused or aggravated a diagnosed medical condition. Therefore, the Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁷ Section 10.608(b) of Office regulations provides that when an application for reconsideration 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.⁸

ANALYSIS -- ISSUE 2

Upon requesting reconsideration, appellant submitted a letter dated April 26, 2008 in which she noted that she had first filed a claim for her alleged injury on September 24, 2003.

⁶ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

⁷ *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

⁸ *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

She further noted that a reinjury of her condition had occurred over a period of time and that on February 13, 2008 she experienced extreme pain in her shoulder and neck due to repetitive pushing, pulling, bending and lifting over her head or shoulders at work. Appellant also included photographs that depicted her utilizing the types of equipment that required her to push, pull, bend and lift over her shoulders or head.

Appellant does not demonstrate that the Office erroneously applied or interpreted a specific point of law as appellant did not refer to any points of law in her letter. She also does not advance a relevant legal argument not previously considered by the Office as her April 26, 2008 letter reiterated her claim that she was injured due to repetitive overhead lifting, pushing, pulling and bending at work. Appellant also did not submit evidence that constitutes relevant and pertinent new evidence not previously considered by the Office. Her April 26, 2008 letter indicated that she had reinjured her neck and shoulders performing repetitive movements at work. However, this information is already of record as appellant provided a similar statement on Form CA-2. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The photographs also do not constitute relevant new evidence as the type of equipment used in appellant's workplace is not in dispute. Also, appellant's assertion that her condition was a reinjury of a separate claim is not germane to the present claim that she filed on February 13, 2008.¹⁰

Because appellant's request for reconsideration does not meet at least one of the criteria required to reopen a case, the Board finds that the Office properly denied appellant's request for reconsideration without a merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational disease in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration without a merit review.¹¹

⁹ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007). *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007).

¹⁰ This decision of the Board does not preclude appellant from pursuing matters in any other claims that she may have filed with the Office.

¹¹ Appellant submitted new evidence on appeal. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated May 12 and April 14, 2008 are affirmed.

Issued: May 15, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board