

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

V.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fresno, TX, Employer)

**Docket No. 09-810
Issued: October 19, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 4, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated December 29, 2008 denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 7, 2008 appellant, then a 43-year-old carrier, filed an occupational disease claim alleging that she developed right arm and elbow pain as well as a knot on her elbow due to repetitive motion at work. She first realized that her condition was caused by her employment on the same day. Appellant did not stop work.

On November 19, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. In particular, the Office requested a physician's report with an opinion as to whether appellant's exposure in her employment contributed to her condition. Appellant did not respond.

In a decision dated December 29, 2008, the Office denied appellant's claim for compensation finding that although the claimed events occurred, there was no medical evidence providing a diagnosis which could be connected to the accepted events.

LEGAL PRECEDENT

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.¹

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.²

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.³

ANALYSIS

Appellant alleged that she developed a right arm and elbow condition due to repetitive motion at work. However, she did not submit any medical evidence to establish that her work duties caused or aggravated a diagnosed medical condition.

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

On November 19, 2008 the Office advised appellant of the medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. However, appellant did not submit any medical evidence prior to the Office's December 29, 2008 decision. The record does not contain any medical reports from a physician explaining how appellant's repetitive work duties caused or aggravated a right arm or elbow condition. As noted, an appellant's burden of proof requires the submission of rationalized medical evidence addressing whether there is a causal relationship between her diagnosed condition and employment factors. Consequently, appellant did not provide the medical evidence required to establish a *prima facie* claim for compensation.⁴

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.⁵

⁴ See A.C., 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁵ 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. See 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from submitting such evidence to the Office as part of a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 29, 2008 is affirmed.

Issued: October 19, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board