United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 09-1773**
	)	**Issued: March 17, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Wellefleet, MA, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 1, 2009 appellant filed a timely appeal from a May 28, 2009 merit decision of the Office of Workers' Compensation Programs and a June 19, 2009 decision denying further merit review of her claim. 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 has established an injury in the performance of duty on April 7, 2009; and (2) whether the Office properly denied appellant's application for reconsideration without merit review.

FACTUAL HISTORY

On August 11, 2009 appellant, then a 63-year-old modified rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2009 she sustained an injury in the performance of duty. She stated that she was riding in an employing establishment vehicle and

her feet and several toes became white and numb. Appellant submitted an unsigned hospital report dated April 7, 2009 with a diagnosis of Raynaud's syndrome.

In an attending physician's report (Form CA-20) dated April 24, 2009, Dr. Lawrence Novak, a surgeon, diagnosed Raynaud's syndrome. He checked a box "yes" that the condition was employment related, stating "cold exposure." Dr. Novak indicated that appellant should avoid cold exposure below 45 degrees. He also submitted a duty status report (Form CA-17) with a description of an April 7, 2009 incident stating that appellant was riding in a jump seat of a vehicle and felt numbness in the feet.

By decision dated May 28, 2009, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish causal relation.

Appellant requested reconsideration of her claim. She discussed the medical evidence and stated that it was not the riding in the LLV (long life vehicle) that caused the injury, but the exposure to cold. In a narrative report dated April 24, 2009, Dr. Novak noted two episodes "this winter" where appellant was exposed to cold. He reported that appellant had a painful left ring finger in one episode and 7 of 10 toes numb and white in the other. Dr. Novak provided results on examination and stated that appellant had "symptomatic Raynaud's disease which is triggered by cold weather." He advised appellant to avoid these triggers.

By decision dated June 19, 2009, the Office denied merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[2] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[5] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[6]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS -- ISSUE 1

Appellant alleged that on April 7, 2009 she was riding in an employing establishment vehicle and her toes and feet became numb and white. The Office does not dispute the factual allegation that she was riding in a vehicle. The Board notes that appellant did not provide other details regarding the incident, such as the outside temperature and the duration of any exposure.

With respect to the medical evidence, an attending physician, Dr. Novak diagnosed Raynaud's syndrome and checked a box "yes" on causal relationship with "cold exposure" without further explanation. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[8] Dr. Novak provided only form reports that did not provide a complete history or a rationalized medical opinion on causal relationship. In the absence of probative medical evidence, the Board finds appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[9] the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[6] *Id.*

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[8] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[9] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."[10] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[11]

ANALYSIS -- ISSUE 2

On reconsideration appellant disputed the Office's determination regarding the deficiencies in the medical evidence. She argued that an ambulance report form was dated and the signature on the CA-17 was verified. The claim was not denied due to the lack of a date or signature. The deficiency in the medical evidence was the lack of a rationalized medical opinion on causal relationship. Appellant also stated that her claim was based on cold exposure, not riding in a vehicle. As noted, her own statement on the claim form was limited to riding in a vehicle and she did not provide a detailed description of her exposure to cold weather. The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered.

Appellant did submit a new medical report from Dr. Novak. It is not, however, relevant and pertinent to the medical issue presented. Dr. Novak had previously checked a box "yes" on causal relationship between a diagnosed Raynaud's syndrome and the employment incident. His narrative report does not provide any new evidence regarding a rationalized medical opinion on the issue. Dr. Novak briefly noted two episodes of cold exposure and stated that the Raynaud's was "triggered" by cold exposure, without further explanation. This is not new and relevant evidence without a more detailed factual history and some attempt to explain how the diagnosed condition was causally related to the April 7, 2009 incident. Appellant does not have to meet her burden of proof in establishing the claim to require the Office to review the merits, but the evidence must be new and relevant to the issue. The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) in this case.

On appeal, appellant reiterated her arguments and resubmitted evidence. Again, the deficiency in the medical evidence was not due to a "misreading" of the evidence but rather the lack of a rationalized medical opinion, based on a complete factual and medical history, on causal relationship between a diagnosed condition and the April 7, 2009 incident.

CONCLUSION

The Board finds appellant did not meet her burden of proof to establish an injury in the performance of duty on April 7, 2009. The Board further finds the application for reconsideration was not sufficient to warrant a merit review.

[10] 20 C.F.R. § 10.606(b)(2).

[11] *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 19 and May 28, 2009 are affirmed.

Issued: March 17, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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