

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Collierville, TN, Employer**

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**Docket No. 10-74
Issued: March 22, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 24, 2008.¹ The record also contains an October 14, 2008 decision denying 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 has established a back injury causally related to factors of her federal employment; and (2) whether the Office properly denied appellant's application for reconsideration without merit review of the claim.

¹ The appeal was originally docketed as No. 09-1147. Since an incorrect OWCP file number was associated with that appeal, Docket No. 09-1147 was dismissed.

FACTUAL HISTORY

On May 30, 2007 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a back condition causally related to her federal employment. On the claim form she stated that she used her back “as does everyone in everything we do.” Appellant discussed a March 6, 2004 employment incident when she was checking her case of mail, raised up and felt a “pop.”²

Appellant submitted medical evidence from Dr. Moacir Schnapp, a neurologist. In an August 29, 2005 report, Dr. Schnapp stated that appellant apparently had a lifting injury at work in March 2004. In an October 24, 2005 report, he diagnosed lumbar spondylosis and sacroilitis, stating that appellant was working overtime and this would likely increase her pain. In a May 16, 2007 report, Dr. Schnapp noted a lifting incident in March 2004 and stated this was at least a trigger to her current back pain.

In a report dated November 30, 2006, Dr. Glen Burford, a chiropractor, indicated that radiographic results showed multiple cervical and lumbar subluxations. He found that appellant’s condition was the direct result of injuries on March 6, 2004.

By decision dated August 21, 2007, the Office denied appellant’s claim for compensation, finding the medical evidence did not establish an injury causally related to the March 6, 2004 incident. Appellant requested reconsideration of her claim on November 26, 2007. She submitted a February 13, 2007 report from Dr. Schnapp, who stated there was a causal relationship between appellant’s March 6, 2004 lumbar strain and disability from August 29 to October 18, 2005.³

In a decision dated March 24, 2008, the Office reviewed the case on its merits and denied modification. Appellant requested reconsideration on September 25, 2008. She resubmitted the November 30, 2006 report from Dr. Burford.

By decision dated October 14, 2008, the Office found appellant’s application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees’ Compensation Act⁴ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as

² Appellant had filed a traumatic injury claim (Form CA-1) for the March 6, 2004 incident on March 8, 2004. This claim was developed under OWCP File No. xxxxxx563 and accepted for a lumbar strain. The Board affirmed a March 28, 2007 Office decision denying merit review of the claim. Docket No. 07-1820 (issued December 26, 2007).

³ The issue in File No. xxxxxx563 was disability during this period. The Board reviewed the February 13, 2007 report in its December 26, 2007 decision on the reconsideration issue presented.

⁴ 5 U.S.C. §§ 8101-8193.

alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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.⁶

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁸ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹

ANALYSIS -- ISSUE 1

The record indicates that appellant filed a claim for a traumatic injury on March 6, 2004 and this claim was developed under OWCP File No. xxxxxx563. That claim is not before the Board. In the present case, appellant had filed an occupational disease or illness claim. While it appears appellant wants to pursue the traumatic injury claim through the occupational disease claim, an occupational disease or illness is a condition caused by work factors occurring over more than one workday or shift.¹⁰

As noted, appellant's burden includes the submission of factual and medical evidence to establish an occupational claim. She did not submit a factual statement discussing the specific job duties she felt contributed to a back condition, the time period she performed these job duties, or any information sufficient to establish an adequate factual background for her claim. In addition, appellant did not submit rationalized medical evidence on the causal relationship between a diagnosed back condition and the identified employment factors. The medical evidence of record provides a brief reference to a March 6, 2004 incident, which is not the issue presented. None of the physicians provided an adequate factual history or a rationalized medical

⁵ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁶ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.5(q).

opinion on the relevant medical issue. The Board accordingly finds that appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.¹¹ 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.”¹²

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 evidence not previously considered by the Office.¹³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.¹⁴

ANALYSIS -- ISSUE 2

In her application for reconsideration, appellant contended that she was disabled from August to October 2005 due to her March 6, 2004 employment injury. This is an issue that is properly pursued under the traumatic injury claim. 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 by the Office.

With respect to evidence, appellant did not submit any new and relevant evidence. The November 30, 2006 report from Dr. Burford was previously submitted on July 27, 2007 and is not considered new evidence.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). The Office properly denied the application for reconsideration without merit review of the claim.

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.605 (1999).

¹³ *Id.* at § 10.606(b)(2).

¹⁴ *Id.* at § 10.608.

CONCLUSION

The Board finds that appellant has not established an injury causally related to factors of her federal employment. The September 25, 2008 application for reconsideration was not sufficient to warrant merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 14 and March 24, 2008 are affirmed.

Issued: March 22, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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