United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 09-2267**
	)	**Issued: September 13, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Aliquippa, PA, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2009 appellant filed a timely appeal of a March 27, 2009 decision of the Office of Workers' Compensation Programs denying her claim for compensation and a July 24, 2009 decision denying her request for an oral hearing. 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 a traumatic injury on September 24, 2008 in the performance of duty; and (2) whether the Office properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On September 25, 2008 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging that on September 24, 2008 she sustained a disc protrusion of the neck and shifting of the vertebrae from carrying weight on her shoulders while delivering mail against her

physician's orders. She stopped work on September 24, 2008.[1] The employing establishment controverted the claim indicating that appellant did not follow the instructions of her supervisor and physician with regard to her work restrictions and limitations.

In a September 25, 2008 statement, appellant noted that on the previous day her supervisor told her to carry mail on a route for two hours. She informed her supervisor that she was under her physician's orders not to carry anything continuously on her shoulders. Appellant's supervisor indicated that her modified-duty offer noted she could carry 10 pounds intermittently. Appellant stated that during her route she alternated carrying mail on each shoulder as to alleviate pressure on a single spot. She indicated that after completing the route, she developed soreness in her neck and lower back with leg weakness.

On October 3, 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 an October 23, 2008 statement, appellant indicated that she was mistakenly given Form CA-1, claim for traumatic injury, to fill out. She explained that the claimed September 24, 2008 work incident aggravated a work injury originally sustained on August 15, 2008 and was not a new injury.[2] Appellant explained that her physician advised no continuous carrying and lifting over 10 pounds. On September 24, 2008 her supervisor told her to carry and deliver mail for two hours without a mailbag to keep the weight off of her shoulders. Appellant indicated that this was too much continued weight for her shoulders and that after she finished her route she had right shoulder, neck and lower back pain. She also submitted an October 24, 2008 statement, from an office manager for her treating physician who indicated that the employing establishment mistakenly gave appellant Form CA-1 for her emergency room visit instead of a Form CA-2a, recurrence of disability form.

In a September 24, 2008 x-ray report of appellant's lumbosacral spine, Dr. Felice Esposito, a Board-certified diagnostic radiologist, found no acute osseous abnormality and suggestion of mild intervertebral disc space narrowing at L5-S1 that may be related to degenerative disc disease. In a cervical spine x-ray report of the same date, Dr. Esposito found normal lateral views. On October 16, 2008 Dr. Hank Markowitz, a Board-certified diagnostic radiologist, found that an x-ray of appellant's acromioclavicular (AC) joint revealed very minimal movement within the right AC joint. He also found no significant acute abnormality.

In a September 25, 2008 work status report, Dr. Jose Sia, a family medicine specialist and a treating physician, advised no carrying, lifting or reaching with weight, not even intermittently.

In a November 7, 2008 decision, the Office denied appellant's claim finding that, as the alleged incident occurred due to appellant's willful misconduct, the incident was not considered within the performance of duty.

[1] The record does not indicate whether or when appellant returned to work.

[2] On September 20, 2008 appellant accepted a modified-duty assignment following an August 15, 2008 work incident for which she filed a claim. Any claim regarding the August 15, 2008 incident or injury is not before the Board on the present appeal. This decision does not preclude appellant from pursuing any other claim she may have filed with the Office.

Appellant requested an oral hearing on November 24, 2008. She also submitted a September 24, 2008 hospital report from Dr. Luigi Forcella, Board-certified in family medicine, who noted appellant's complaint of back and neck pain status post a neck injury two months prior. Dr. Forcella noted appellant had been lifting over 10 pounds at work and reported a protruding cervical disc between C5-6. He also noted that appellant had been restricted to limited weight carrying of 10 pounds but had been instructed by her supervisor to carry 20 to 30 pounds. Appellant subsequently reported severe pain from her neck to lower back as well as weakness in both legs.

In a December 9, 2008 x-ray report of appellant's abdomen, Dr. Craig Trent, a Board-certified diagnostic radiologist, found no acute process and normal bowel gas pattern. He also noted no change from December 1, 2008.

In a February 17, 2009 decision, an Office hearing representative, vacated the November 7, 2008 decision and remanded the case to the Office to adjudicate the claim. He found that the case was not in posture for a hearing as the Office did not establish that appellant was culpable of willful misconduct.

In a March 27, 2009 decision, the Office denied appellant's claim finding that the medical evidence did not establish causal relationship to the established work-related events.

In a postmarked envelope dated May 3, 2009, appellant requested an oral hearing on a form dated April 20, 2009.

In a decision dated July 24, 2009, an Office hearing representative denied appellant's oral hearing request finding that it was not filed within 30 days from the March 27, 2009 decision. He further found that appellant's claim could be equally well addressed by requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

[3] 5 U.S.C. §§ 8101-8193.

[4] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

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.[6]

ANALYSIS -- ISSUE 1

The record reflects that on September 24, 2008 appellant carried mail on her shoulders while delivering mail. However, the medical evidence does not establish that the September 24, 2008 incident caused or aggravated appellant's alleged neck, back and leg conditions.

In a September 24, 2008 report, Dr. Forcella noted appellant's complaint of back and neck pain from a neck injury that she sustained two months prior. He also noted that appellant's present neck, back and leg pain was from lifting above the weight limit advised by her primary care physician. However, Dr. Forcella generally attributed appellant's conditions to "lifting" but did not specify what appellant lifted or explain how lifting caused or aggravated his neck, back or leg conditions on September 24, 2008.[7] Moreover, he did not provide a diagnosis for any of appellant's alleged conditions. Although Dr. Forcella noted that appellant's complaint of pain, pain is a symptom and not a compensable medical diagnosis.[8]

Similarly, Dr. Sia's September 25, 2008 work status report advised no carrying, lifting or reaching but did not address the reasons for these work restrictions or explain whether these restrictions were caused by a work-related incident. As noted, medical evidence without an opinion on causal relationship is of limited probative value.

Appellant also submitted reports of diagnostic testing from Drs. Esposito, Markowitz and Trent. However, these reports are insufficient to establish appellant's claim as they do not

[5] *Id*.

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

[7] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (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).

[8] *See C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

address the issue of causal relationship; *i.e.*, they do not address whether carrying mail on September 24, 2008 caused or aggravated a diagnosed medical condition.[9]

The record also contains an October 24, 2008 statement from Dr. Sia's office manager opining that on September 24, 2008 appellant aggravated a preexisting injury originally sustained on August 15, 2008. As lay individuals are not competent to render medical opinions under the Act, this statement has no probative value.[10]

For these reasons, appellant did not submit sufficient medical evidence to establish that she sustained a traumatic injury on September 24, 2008 in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant not satisfied with a decision of the Office is entitled to a hearing before an Office hearing representative when the request is made within 30 days after issuance of the Office's decision.[11] Under the implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to a hearing by writing to the address specified in the decision within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.[12] If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.[13]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.[14]

ANALYSIS -- ISSUE 2

The Office issued its decision denying appellant's claim on March 27, 2009. Appellant's request for an oral hearing was postmarked May 3, 2009.[15] Because the hearing request was made more than 30 days after the March 27, 2009 decision, the Board finds that the Office

[9] *See supra* note 7.

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.616(a); 5 U.S.C. § 8124(b)(1).

[13] *Teresa Valle*, 57 ECAB 542 (2006).

[14] *D.E.*, 59 ECAB ___ (Docket No. 07-2334, issued April 11, 2008).

[15] The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. 20 C.F.R. § 10.616(a).

properly denied appellant's request for a hearing as untimely filed. Appellant is not entitled to a hearing as a matter of right. The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation in requests for hearing.[16]

The Office exercised its discretionary authority under section 8124 in considering whether to grant a hearing. It found that appellant's request could be equally well addressed through a request for reconsideration under section 8128 and the submission of new evidence. The Board has held that it is an appropriate exercise of discretion for the Office to apprise appellant of the right to further proceedings under the reconsideration provisions of section 8128.[17] The Board finds that the Office properly exercised its discretion in denying appellant's request for an oral hearing as untimely.[18]

On appeal, appellant asserts that her claim has been wrongfully denied because she mistakenly filled out two new claims within a month of each other when the original injury is August 15, 2008, and on September 24, 2008 she sustained pain after carrying mail on her shoulders against her physician's orders. However, the actual issue in the present case is whether she met her burden of proof to establish whether she sustained a traumatic injury on September 24, 2008 that caused or aggravated a diagnosed medical condition. The issue is medical in nature, and as noted, the medical evidence did not support causal relationship between appellant's claimed neck, back and leg conditions and carrying mail on September 24, 2008.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on September 24, 2009 in the performance of duty. The Board also finds that the Office properly denied her request for an oral hearing as untimely filed.

[16] *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

[17] *See André Thyratron*, 54 ECAB 257 (2002).

[18] The Board notes that, after the Office's March 27, 2009 decision, appellant submitted additional evidence to the record. However, as the Office did not consider this evidence in reaching a decision, the Board may not consider it for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 24 and March 27, 2009 are affirmed.

Issued: September 13, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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