

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

C.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer

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**Docket No. 11-1087
Issued: December 2, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 29, 2011 appellant filed a timely appeal from an October 19, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case. The record also contains a March 4, 2011 OWCP decision denying merit review of the claim.

ISSUES

The issues are: (1) whether appellant has established a left arm condition causally related to her federal employment, and (2) whether OWCP properly denied her application for reconsideration without review of the merits of the claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 11, 2010 appellant, then a 56-year-old letter carrier, filed an occupational claim (Form CA-2) alleging that she sustained a left shoulder or forearm injury as a result of her federal employment. On the claim form she stated that her regular mail route had been taken away for several weeks, and she now had “to carry (not on my shoulder) my satchel to and from the route.” Appellant stated that she had a lot of mail and parcels coming back from her route, was told to put magazines on her left arm and make two or three bundle deliveries. She concluded that carrying the satchel had aggravated her injuries.

In a narrative statement, appellant stated that she felt left shoulder and forearm pain on March 18, 2010 and sought treatment on March 26, 2010. She indicated that her regular route with a vehicle did not involve carrying a satchel, but a few weeks earlier she had been given a different route. According to appellant, on the new route she had to use a push cart up and down hills, five to six days a week. She again stated that she did not carry the satchel on her shoulder.

With respect to medical evidence, appellant submitted a March 29, 2010 form report from Dr. Arnold Traynis, a family practitioner.² The employment exposure description stated that she was now on a walking route and had to carry a satchel on her left shoulder. Dr. Traynis diagnosed sprain/strain of the left shoulder, upper arm, elbow and forearm. He checked a box “yes” that the findings and diagnosis were consistent with the patient’s account of injury. Appellant also submitted treatment notes from Dr. Traynis dated April 6, May 4 and June 1, 2010.

In a report dated June 21, 2010, Dr. Traynis indicated that appellant was first treated on March 29, 2010 “for the injury which occurred on March 18, 2010 to her left shoulder and neck due to her continued and prolonged carrying of mail over her left shoulder with her mail satchel.” He stated that she was given work restrictions and restarted full duty as of April 20, 2010. Dr. Traynis indicated that appellant continued to complain of left shoulder and forearm pain, especially after finishing her route. He concluded that “the injury was suffered while in the course of her usual duties at the [employing establishment] and is consistent with the federal guidelines regarding such injuries.” Dr. Traynis recommended additional physical therapy.

By decision dated June 30, 2010, OWCP denied the claim for compensation. It determined that the medical evidence was insufficient to establish an injury causally related to the identified employment factors.³

On July 14, 2010 appellant requested a review of the written record by an OWCP hearing representative. She resubmitted medical evidence, including the June 21, 2010 report from Dr. Traynis. Appellant also submitted duty status reports (Form CA-17) from Dr. Traynis recommending physical therapy.

² The form report appears to be a state workers’ compensation form and is entitled “Doctor’s First Report of Occupational Injury or Illness.”

³ OWCP did not discuss the June 21, 2010 narrative report from Dr. Traynis.

By decision dated October 19, 2010, OWCP's hearing representative affirmed the June 30, 2010 OWCP decision. The hearing representative found the evidence from Dr. Traynis was based on an inaccurate history of injury and was of diminished probative value.

On December 6, 2010 appellant requested reconsideration of her claim. She indicated that she was submitting pictures of the "different ways I have to carry the satchel. I don't have to put the strap on my shoulder to be injured." Appellant stated that carrying the satchel any length of time hurt her neck, shoulder, forearm and hand.

By decision dated March 4, 2011, OWCP determined the reconsideration request was insufficient to warrant review of the merits of the compensation claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA⁴ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as 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

⁴ 5 U.S.C. §§ 8101-8193.

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.*

ANALYSIS -- ISSUE 1

The factual statements provided by appellant identified as employment factors the carrying of a satchel of mail on a new mail route. Appellant specifically stated that she did not carry the satchel on her left shoulder, but used a push cart and walked up and down hills while delivering mail.

The medical evidence from Dr. Traynis provided diagnoses that included sprain/strain of the left shoulder, upper arm elbows and forearm. As noted above, to meet appellant's burden of proof she must submit medical evidence with a rationalized opinion on causal relationship between the diagnosed conditions and the identified employment factors. One of the considerations in determining whether a medical report provides a rationalized opinion is whether it is based on a complete and accurate factual background.¹⁰ Dr. Traynis stated in his June 21, 2010 report that she engaged in "continued and prolonged carrying of mail over her left shoulder." The March 29, 2010 form report also states that appellant had to carry a satchel on her left shoulder. This is not an accurate factual history based on appellant's statements. She specifically stated that she did not carry the satchel on her shoulder, but used a push cart.

Dr. Traynis did not provide a proper background for an opinion on causal relationship. A rationalized medical opinion would include a complete factual background discussing how and when appellant used a push cart. In addition, a rationalized opinion would explain how the identified employment factors contributed to a diagnosed left arm or other condition. Dr. Traynis did not provide a rationalized medical opinion based on an accurate background. The Board finds the medical evidence of record is not sufficient to meet appellant's burden of proof. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹¹ its regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP."¹² 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 OWCP without review of the merits of the claim.¹³

¹⁰ See *Joseph N. Fassi*, 42 ECAB 677 (1991).

¹¹ 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").

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *Id.* at § 10.608(b); see also *Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS -- ISSUE 2

The application for reconsideration in this case did not discuss a specific point of law or provide a new and relevant legal argument. Appellant submitted photographs of the “ways” in which she has to carry the satchel. She did not indicate how often she may have carried a satchel in a particular manner, but in any case the issue with regard to her claim was a medical issue. OWCP denied the claim on the grounds that the medical evidence was of diminished probative value. Appellant again indicated that she did not carry the satchel on her shoulder, as she stated that she did not have to put the strap on her shoulder to be injured. The evidence submitted is not relevant with respect to the issue regarding medical evidence which stated that she did carry the satchel on her left shoulder.

The Board therefore finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by it or submit relevant and pertinent evidence not previously considered by OWCP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish a left arm condition causally related to her federal employment. The Board further finds that OWCP properly denied appellant’s application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 4, 2011 and October 19, 2010 are affirmed.

Issued: December 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board