United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 10-900**
	)	**Issued: January 4, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Fort Dodge, IA, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from a September 15, 2009 merit decision of the Office of Workers' Compensation Program. He also appealed a January 20, 2010 Office decision denying his request for a review of the written record. 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 his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 20, 2009; and (2) whether the Office properly denied appellant's request for a review of the written record as untimely.

FACTUAL HISTORY

On April 21, 2009 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that on April 20, 2009 he felt a burn in his right shoulder as he was sliding shut the driver's door of his mail truck. He did not stop work. Appellant was treated at the

emergency department of Trinity Regional Medical Center on April 21, 2009. Treatment records signed by a nurse practitioner diagnosed a muscle strain but found him medically fit to work.

Appellant provided an April 24, 2009 report from his primary care physician, Dr. John D. Birkett, a family practitioner, who noted that appellant presented for a right shoulder injury at work on April 20, 2009. Dr. Birkett advised that appellant went to an emergency room but that x-rays were negative. He stated that ibuprofen provided some help and noted that appellant performed repetitive activities at work involving his arm and shoulder. Dr. Birkett stated that appellant did not have a history of shoulder injury. After conducting a review of symptoms, he assessed that appellant sustained shoulder joint pain, but still possessed full range of motion in the right shoulder. Dr. Birkett injected appellant's shoulder with medication and recommended an orthopedic referral if the shot was unsuccessful.

On July 30, 2009 appellant filed a recurrence of disability claim alleging that, on July 22, 2009, he sustained a sharp pain in the right shoulder while he was pulling down the back door of his mail truck. He did not stop work but requested medical treatment. Appellant returned to Dr. Birkett on July 30, 2009. Dr. Birkett diagnosed shoulder joint pain and administered another cortisone injection to appellant's right shoulder.

Appellant also submitted additional evidence from his visit to Trinity Regional Medical Center on April 21, 2009. The treatment notes from Dr. Elizabeth W. Stoebe, an osteopath Board-certified in family medicine, noted that he felt a burn in his right shoulder when he slid a door shut with his right arm at work. Dr. Stoebe indicated that appellant's right shoulder was x-rayed and diagnosed muscle strain. Appellant was prescribed ibuprofen for pain and flexeril. A nurse practitioner's report also listed a history of his pulling a door as the cause of injury.

In a developmental letter dated August 11, 2009, the Office notified appellant that the evidence he submitted was insufficient to establish his traumatic injury claim and advised him of the evidence needed to support his claim.[1] It requested that he provide all medical records for treatment received as a result of the April 20, 2009 incident and submit a (Form CA-20) attending physician's report filled out by his physician identifying a specific diagnosis that resulted from the April 20, 2009 incident and explaining why the condition diagnosed was caused or aggravated by the claimed injury. In an August 21, 2009 letter, appellant informed the Office that he had no medical records and returned a blank CA-20 form report. He indicated that he was unable to submit a completed report because Dr. Birkett's office would charge him $15.00 to fill out the form.

[1] The Office indicated that appellant's claim was originally received as a simple and uncontroverted case resulting in minimal or no time lost from work. It paid him compensation for limited medical expenses without formal adjudication of his claim.

In a decision dated September 15, 2009, the Office denied appellant's traumatic injury claim on the grounds that he failed to provide sufficient medical evidence to establish that his pulling of the mail truck door caused a right shoulder injury.[2]

On November 5, 2009 appellant requested a review of the written record and submitted additional evidence with his request.

In a January 20, 2010 decision, the Office denied appellant's request on the grounds that he failed to make the request within 30 days after the issuance of the September 15, 2009 decision. It noted further considering whether to grant a discretionary hearing but determined that the issue could be further addressed by requesting reconsideration before the Office and submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[4] including that he is an "employee" within the meaning of the Act[5] and that he filed his claim within the applicable time limitation.[6] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

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[2] The Office also found that appellant's recurrence claim was moot because he did not establish that he had a work-related injury on April 20, 2009. Office regulations contemplate that there must be an accepted employment-related injury or illness before a claim can be made for recurrence of disability or of a medical condition. *See* 20 C.F.R. § 10.5(x), (y).

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951). *See also* 5 U.S.C. § 8101(1).

[6] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[7] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[9] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[10]

ANALYSIS -- ISSUE 1

The evidence supports that appellant pulled the driver's door of his mail truck on April 20, 2009 as alleged. However, he did not submit sufficient medical evidence to establish that this incident caused or aggravated an injury to his right shoulder.

In an April 24, 2009 report, Dr. Birkett diagnosed shoulder joint pain and noted that appellant hurt his right shoulder at work. This report is insufficient to meet appellant's burden of proof. Dr. Birkett did not have an accurate history of how the claimed injury occurred as he did not mention the April 20, 2009 incident in which appellant slid the door of his vehicle shut.[11] Rather, he noted that appellant performed repetitive activities with his arm at work but he did not attribute his condition to repetitive activities, the basic for this claim. Dr. Birkett did not otherwise provide medical rationale explaining the reasons why any particular employment activity on April 20, 2009 caused or aggravated a right shoulder condition.[12]

In an April 21, 2009 treatment record, Dr. Stoebe listed a history of appellant experiencing a burn in his right shoulder when he slid a door shut with his right arm at work. She diagnosed a muscle strain but she did not otherwise explain how the April 20, 2009 door sliding incident caused or aggravated the diagnosed muscle strain. As noted, part of a claimant's burden of proof includes the submission of rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. Dr. Stoebe did not explain the reasons why sliding a vehicle door would cause a muscle strain.

Appellant also provided nursing records from Trinity Regional Medical Center but these records are of no probative medical value in establishing causal relationship as a nurse is not a physician as defined under the Act.[13]

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[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[13] 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See L.D.*, 59 ECAB 648 (2008) (nurse practitioner is not a physician as defined under the Act). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

The Office advised appellant of the medical evidence needed to establish his claim in its August 11, 2009 letter. Appellant did not submit sufficient medical evidence before the Office issued its September 15, 2009 decision denying his claim. Therefore, appellant did not meet his burden of proof to establish his claimed right shoulder condition because the medical evidence does not adequately explain how the April 20, 2009 work incident caused or aggravated his right shoulder condition.[14]

On appeal, appellant argues that he injured his right shoulder while working on April 20, 2009, that he filled out all the necessary paperwork and that the Office paid for treatment on April 24, 2009 but refused to pay for subsequent treatment. Although the April 20, 2009 incident is not in dispute, he did not meet his burden of proof because he did not submit rationalized medical evidence showing that his shoulder condition was causally related to that incident. The mere fact that the Office may have initially paid for some medical treatment in a simple, uncontroverted case, does not establish that the condition for which that treatment was received is employment related.[15] The Board finds that the Office properly denied appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act[16] provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.[17] Federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[18] Although the claimant is no longer entitled to an oral hearing or review of the written record as a matter of right if the request is filed past the 30-day period, the Office may within its discretionary powers grant or deny appellant's request and must exercise that discretion.[19]

ANALYSIS -- ISSUE 2

Appellant filed his request for review of the written record on November 5, 2009, more than 30 days after the Office issued its September 15, 2009 decision. Because he did not request

[14] The Board notes that appellant submitted new evidence to the Office with his request for a review of the written record. Appellant also submitted new evidence on appeal. As the Office has not considered this evidence in reaching a decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

[15] *See Gary L. Whitmore*, 43 ECAB 441, 447 (1992); *James F. Aue*, 25 ECAB 151, 153 (1974).

[16] 5 U.S.C. § 8124(b)(1).

[17] *D.M.*, 60 ECAB ___ (Docket No. 08-1814, issued January 16, 2009); *Joseph R. Giallanza*, 55 ECAB 186, 190-91 (2003).

[18] 20 C.F.R. § 10.615.

[19] *See Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

a review of the written record with 30 days of the September 15, 2009 decision, the Office properly denied his request as being untimely filed.

The Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. In its September 15, 2009 decision, it exercised its discretion and found that appellant's issue could also be addressed by requesting reconsideration before the Office and submitting additional evidence. This basis for denying appellant's request is a proper exercise of the Office's discretionary authority.[20] Moreover, no evidence is offered that the Office abused its discretion. Accordingly, the Board finds that the Office's January 20, 2010 decision properly denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant has not established that he sustained a traumatic injury in the performance of duty on April 20, 2009. The Board also finds that Office properly denied his request for a review of the written record as untimely.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2010 and September 15, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 4, 2011
Washington, DC

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

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

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

[20] *Mary B. Moss*, 40 ECAB 640, 647 (1989).