United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 11-924**
	)	**Issued: October 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) October 4, 2010 merit decision denying her occupational disease claim and a January 7, 2011 nonmerit decision denying her hearing request as untimely. 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.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment; and (2) whether OWCP properly denied her request for an oral hearing as untimely.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 20, 2010 appellant, a 36-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) as a result of repetitive employment activities, including lifting up to 70 pounds of mail, dumping and opening sacks and pushing equipment.

In a July 13, 2010 first report of occupational illness or injury, Dr. Anton Volpicelli, a treating physician, diagnosed neck, shoulder and arm sprains and enthesopathy of the wrist bilaterally. He related appellant's report that she developed pain and numbness in her wrists, hands, arms, shoulders and neck due to years of repetitious work duties. On examination of the wrists, he noted full range of motion, tenderness, muscle weakness and sensory changes to light touch and pin pricks. Tinel's and Phalen's tests were positive. Examination of the neck revealed posterior cervical tenderness, as well as tenderness of the paracervical and trapezius muscles.

In a letter dated July 28, 2010, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of her diagnosed condition.

In a July 13, 2010 report, Dr. Volpicelli noted that appellant's job duties at the time of her May 27, 2010 injury included repetitive use of the hands, prolonged standing and walking and lifting up to 50 pounds. The report reflected that she had been working at the employing establishment for 12 years. Dr. Volpicelli diagnosed bilateral CTS/tendonitis and trapezius sprain. By placing a checkmark in the "yes" box, he indicated that his findings were consistent with appellant's description of events. The record contains treatment notes from Dr. Volpicelli for the period July 13 through September 14, 2010 reiterating his diagnoses.

The record contains treatment notes and form reports, bearing illegible signatures, for the period July 15 through September 14, 2010. Appellant also submitted physical therapy notes for the period July 15 through September 8, 2010.

By decision dated October 4, 2010, OWCP denied appellant's claim on the grounds that she had not established the fact of injury. It found that the medical evidence was insufficient to establish a causal relationship between the diagnosed condition and identified work events.

On December 1, 2010 appellant requested a review of the written record. By decision dated January 7, 2011, an OWCP hearing representative denied her request as untimely.[2]

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its January 7, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under OWCP[3] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged[4] and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the 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] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[7]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[8]

ANALYSIS -- ISSUE 1

It is not disputed that appellant performed repetitive employment activities, including lifting up to 70 pounds of mail, dumping and opening sacks and pushing equipment as a mail handler for 12 years. The Board finds, however, that the medical evidence submitted by her is insufficient to establish that her diagnosed medical condition was caused or aggravated by factors of her federal employment. Therefore, appellant has failed to meet her burden of proof.

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Joseph W. Kripp,* 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[5] *Dennis M. Mascarenas,* 49 ECAB 215, 217 (1997).

[6] *Michael R. Shaffer,* 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[7] *Leslie C. Moore,* 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[8] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 5 at 218.

The medical evidence of record consisted of reports and treatment notes from Dr. Volpicelli. On July 13, 2010 he provided examination findings and diagnosed bilateral CTS/tendonitis and trapezius sprain. By placing a checkmark in the "yes" box, Dr. Volpicelli indicated that his findings were consistent with appellant's description of events. He related her report that she developed pain and numbness in her wrists, hands, arms, shoulders and neck due to 12 years of repetitious work duties. Dr. Volpicelli noted that appellant's job duties at the time of her May 27, 2010 injury included repetitive use of the hands, prolonged standing and walking and lifting up to 50 pounds. His report lacks probative value on several counts. Most significantly, Dr. Volpicelli did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed conditions. Medical conclusions unsupported by rationale are of limited probative value.[9] The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[10] Additionally, Dr. Volpicelli did not indicate that his opinion was based on a review of a complete factual and medical background of the claimant. For all of these reasons, his reports are of diminished probative value. Dr. Volpicelli's treatment notes, which do not contain an opinion on the cause of appellant's condition, are of limited probative value.[11]

Appellant also submitted physical therapy notes for the period July 15 through September 8, 2010. As a physical therapist is not considered a "physician" under FECA, these reports do not constitute probative medical evidence.[12] The record also contains form reports, bearing illegible signatures. As the authors of these reports cannot be identified as physicians as defined by FECA, they lack probative value.[13]

Appellant expressed her belief that her alleged condition resulted from her duties as a mail handler. However, her belief that her condition was caused by the alleged work-related injury is not determinative.[14]

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the

[9] *Willa M. Frazier*, 55 ECAB 379.

[10] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

[11] Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999). Medical conclusions unsupported by rationale are of little probative value. *Willa M. Frazier,* 55 ECAB 379.

[12] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of OWCP provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *Id.*

[14] *See supra* note 8.

physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how she claimed conditions were caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment.

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

Section 8124(b)(1) of OWCP provides that, before review under section 8128(a) of OWCP, a claimant not satisfied with a decision of OWCP is entitled to an oral hearing or review of the written record on his claim, on request made within 30 days after the date of the issuance of the decision.[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.[16] OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.[17] In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.[18]

ANALYSIS -- ISSUE 2

Appellant had 30 calendar days from OWCP's October 4, 2010 decision to request an oral hearing before an OWCP hearing representative. Accordingly, she had until November 3, 2010 to file her request.[19] Because appellant's request was filed on December 1, 2010, it was untimely. Therefore, she was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA.

Exercising its discretion to grant a discretionary hearing, OWCP denied appellant's request on the grounds that she could equally well address any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the

[15] 5 U.S.C. § 8124(b)(1).

[16] 20 C.F.R. § 10.616(a).

[17] *Herbert C. Holley*, 33 ECAB 140 (1981); *G.W.*, Docket No. 10-762 (issued April 23, 2010).

[18] *G.W., id*.

[19] In computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. *See John B. Montoya*, 43 ECAB 1148, 1151 (1992); *Marguerite J. Dvorak*, 33 ECAB 1682 (1982). *See also* FECA Program Memorandum No. 250 (January 29, 1979).

issues raised by the October 4, 2010 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.[20]

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that OWCP properly denied her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2011 and October 4, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 18, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[20] The Board has held that the denial of a hearing on these grounds is a proper exercise of OWCP's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988). Appellant has one year to make a timely request for reconsideration of OWCP's June 23, 2009 merit decision. *See* 20 C.F.R. § 10.607.