U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANA E. ROLON and DEPARTMENT OF THE TREASURY, U.S. CUSTOMS SERVICE, San Juan, P.R.

Docket No. 96-2003; Submitted on the Record;
Issued June 26, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained any disabling condition, while in the performance of duty after October 11, 1985; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On October 18, 1995 appellant, then a 43-year-old criminal investigator, filed an occupational disease claim, alleging that she had bilateral carpal tunnel syndrome and cervico dorsal myositis that she first became aware was causally related to factors of her federal employment on October 11, 1985. Appellant indicated that she had held a position as a marine enforcement officer for three years and had developed these conditions in 1985 due to that former position. She also indicated that the condition worsened with her use of computers. In a supplemental statement, appellant reiterated that she had first experienced pain related to the claimed condition, while working as a marine enforcement officer and captain. She reported that she had seen Dr. Luis E. Faura-Clavell, a general practitioner specializing in physical medicine, for her condition and was diagnosed with bilateral carpal tunnel syndrome and cervico dorsal myositis. The pain stopped until she was pregnant in 1988 and the continued use of computers after her pregnancy made the condition worse. Appellant indicated that she had diminished strength in her hand due to the claimed conditions.

In a letter dated November 13, 1995, the Office requested that appellant submit a detailed statement describing what employment-related activities she believed contributed to her claimed conditions and how frequently she performed these activities, a description of her nonemployment activities, which required repetitive hand or wrist movement, a description of any previous injuries to her hands, arms or wrists and a detailed narrative report from her physician describing the history of injury, testing performed and the relationship between employment-related activities and the diagnosed conditions.

In a decision dated January 12, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that an injury had been sustained as alleged. In a decision dated March 9, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted with the request was duplicative or irrelevant and therefore was not sufficient to warrant review of the prior decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained a disabling condition while in the performance of duty after October 11, 1985.

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[2] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[3] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[4] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[5]

In the present case, appellant has not submitted the factual evidence necessary to establish that exposure took place while in the performance of duty. The Office requested information concerning the type of exposure, place and manner in relation to appellant's federal employment. Although appellant has provided general evidence concerning her previous position with the employing establishment, she has not described with any specificity what employment-related activities she believed caused her claimed conditions or the frequency of those activities. Moreover, while she has provided medical reports from Dr. Faura-Clavell

[1] *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

[3] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[4] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[5] *Manuel Garcia*, 37 ECAB 767 (1986).

diagnosing bilateral carpal tunnel syndrome, he also has not provided an opinion describing the causal nexus between the claimed condition and factors of appellant's federal employment. Appellant has not established either component of fact of injury and has not met her burden of proof in establishing that an injury was sustained as alleged.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[6] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8]

On reconsideration appellant resubmitted the supplemental statement that had been previously considered by the Office, the previously reviewed medical reports by Dr. Faura-Clavell, and submitted additional medical reports by Dr. Rafael E. Sein Siaca, a physiatrist. The supplemental statement and medical evidence by Dr. Faura-Clavell is duplicative and, therefore, is not sufficient warrant reopening the case. The reports by Dr. Sein Siaca, while also diagnosing bilateral carpal tunnel syndrome, do not address the central issue in this case, *i.e.*, in what manner, time and place was appellant exposed to work-related activities, which caused her claimed conditions. Therefore, appellant has not presented evidence, which is sufficient to warrant reopening the record or review of the prior decision in this case. The Office has not abused it discretion in denying appellant's request for reconsideration.

[6] 20 C.F.R. § 10.138(b)(2).

[7] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[8] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated March 9 and January 12, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 26, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member