

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MENDA J. ROTH and U.S. POSTAL SERVICE,  
BRENTWOOD BRANCH POST OFFICE, St. Louis, MO

*Docket No. 00-1178; Submitted on the Record;  
Issued March 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs, in its February 22, 2000 decision, to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's February 22, 2000 decision denying appellant's request for a review on the merits of her claim.

On December 17, 1997 appellant, then a 37-year-old letter carrier, filed a notice of occupational disease (Form CA-2) claiming that she developed carpal tunnel syndrome in her left hand due to her federal employment as a letter carrier.<sup>1</sup> She indicated that she suffered extreme pain after one hour of mail delivery when carrying three bundles of mail and that with two bundles of mail she could work for two to three hours before the pain began. In support of her claim, appellant submitted a job description, a statement from her supervisor received January 20, 1998 refuting her claim that she was required to carry three bundles of mail and a note from Dr. Vincent Fortunato, a Board-certified internist. In his December 4, 1997 note, Dr. Fortunato stated that appellant has severe wrist pain and cannot lift more than one bundle at a time. Appellant eventually underwent surgery to correct the condition.

By letter dated January 30, 1998, the Office requested that appellant submit additional factual and medical information.

On February 25, 1998 appellant submitted a job description and a detailed narrative response addressing the Office's factual questions. No medical evidence was submitted.

By decision dated March 16, 1998, the Office denied appellant's claim since no medical evidence was received that diagnosed appellant with carpal tunnel syndrome.

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<sup>1</sup> It should be noted that the record contains evidence that appellant's employment may have aggravated a prior condition in her left wrist, since appellant fractured her left wrist on August 7, 1996.

By letter dated March 26, 1998, appellant's representative requested an oral hearing.<sup>2</sup>

On December 16, 1998 an oral hearing was held. At the hearing, appellant submitted additional medical evidence, including several nerve conducting tests, an electromyogram report from Dr. Gary Myers, a medical report from Dr. Fortunato, a Board-certified psychiatrist and neurologist, a medical report and several status reports from Dr. Dale E. Doerr, dated March 6 to July 13, 1998, as well as physical therapy reports. The report from Dr. Myers, dated February 10, 1998, stated that findings are consistent with a left carpal tunnel syndrome. Dr. Fortunato, in his February 25, 1998 report, diagnosed appellant with left carpal tunnel syndrome. The initial medical report dated March 6, 1998 from Dr. Doerr also diagnosed appellant with left carpal tunnel syndrome.

By decision dated February 18, 1999, the hearing representative affirmed the Office's March 16, 1998 decision since the medical evidence submitted did not establish a causal connection between appellant's condition and her employment.

By letter dated December 27, 1999, appellant requested reconsideration. She submitted a personal statement which opined that the decisions of March 16, 1998 and February 18, 1999 were conflicting. Appellant believed that the March 16, 1998 decision stated that her job had caused the condition but she had not proven that she had the condition and that the February 18, 1999 decision stated that she had the condition but it was not proven that her employment caused the condition.<sup>3</sup>

The Board finds that the refusal of the Office, in its February 22, 2000 decision, to reopen appellant's case for further consideration of the merits of her claim did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the

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<sup>2</sup> By letter dated May 20, 1998, the Office requested that appellant submit an authorization so that her attorney may represent her. On June 1, 1998 the Office received an authorization from appellant.

<sup>3</sup> The Board notes that the Office's first decision denied appellant's claim because no medical evidence was submitted, and the second decision by the hearing representative affirmed the Office's decision because the medical evidence received at the hearing did not establish a causal connection between appellant's injury and her employment.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.606.

<sup>6</sup> 20 C.F.R. § 10.607.

above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>7</sup>

Appellant's claim was denied because she had not established that her diagnosed conditions were causally related to her federal employment. The issue was medical in nature.

When appellant requested reconsideration by letter dated December 27, 1999, she did not submit any new or relevant evidence. Appellant only submitted a personal statement which expressed her belief that the Office's March 16, 1998 and February 18, 1999 decisions were contradictory. Her own opinion was irrelevant to the medical issue at hand and insufficient to require the Office to reopen appellant's case for review.

Appellant has not established that the Office abused its discretion in its February 22, 2000 decision by denying her request for a review of the merits of her claim under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated February 22, 2000 is hereby affirmed.

Dated, Washington, DC  
March 7, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.608.