

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY TRAHAN and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 00-1188; Submitted on the Record;
Issued May 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On December 4, 1996 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that, on September 15, 1996, she sustained soreness, stiffness and swelling and pain in the left and right wrists, hands, ankles and feet. Appellant did not stop work.

By letter dated December 20, 1996, the Office advised appellant of the additional factual and medical evidence needed to establish her claim, including a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment. Appellant was allotted 45 days to submit the requested evidence.

In a September 16, 1996 report, received by the Office on January 19, 1997, Dr. Linda Skory, Board-certified in internal medicine, indicated that appellant "may" have problems indicative of an early rheumatoid pattern and use-related wrist pain. She also stated that, if the wrist pain was primarily due to overuse, it was "likely" that it was work related.

In a February 3, 1997 merit decision, the Office denied appellant's claim on the grounds that appellant had not provided sufficient factual and medical evidence to establish that she sustained an occupational disease.

In a letter received by the Office on February 12, 1997, appellant requested an examination of the written record.

In a May 28, 1997 merit decision, the hearing representative affirmed the February 3, 1997 decision finding that fact of injury had not been established.

In an April 27, 1998 report, Dr. Skory opined that the cause of appellant's chronic tendinitis was her repetitive use of her upper extremities while performing her job duties.

In a letter received by the Office on May 26, 1998, appellant requested reconsideration and enclosed a report dated October 8, 1997 from Dr. Skory. She stated that appellant's preliminary diagnosis appeared to be upper extremity repetitive stress injury. Dr. Skory also stated that appellant had rheumatoid arthritis and right deltoid tendinitis.

In an August 4, 1998 merit decision, the Office affirmed the May 28, 1997 decision finding that the evidence failed to establish that appellant sustained a medical condition while in the performance of duty.

In a letter received by the Office on January 27, 1999, appellant requested reconsideration and enclosed additional evidence. In an undated report received by the Office on January 27, 1999, Dr. Skory diagnosed extensor tendinitis of the hands and lateral epicondylitis with no evidence of rheumatoid arthritis. She noted appellant's pain in her arms and described appellant's pain with light activity such as household duties and work duties including frequent repetitive actions of the arms such as lifting and grasping and writing.

In a March 16, 1999 decision, the Office denied merit review of appellant's request for reconsideration on the grounds that the evidence submitted was repetitious, cumulative or irrelevant in nature.

In a letter received by the Office on August 6, 1999, appellant requested reconsideration and enclosed additional evidence.

In a report dated July 16, 1999, Dr. Skory noted that appellant continued to have constant pain in the arms with mild activity, including many activities of daily living. She noted that an evaluation for degenerative disease was negative and she "could not ascribe the condition with certainty. Dr. Skory also noted that appellant's "work duties at the onset included repetitive motion, but by history at a level which would not necessarily be associated with the severe and prolonged nature of her disability." She indicated that appellant's problem extended far beyond the usual course of repetitive stress injury and "no other explanation was found except that of a severe and unresponsive case of repetitive stress injury."

In a December 17, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request for review was found to be of a cumulative nature.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on February 24, 2000, the Board lacks jurisdiction to review the Office's most recent merit decision dated August 4, 1998. Consequently, the only decisions properly before the Board are the Office's March 16 and December 17, 1999 decisions denying merit review.

The Board finds that the Office properly denied merit review of appellant's requests for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may--

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under section 10.606(b)(2), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that, when an application for review of the merits of a claim fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³ Evidence that repeats or duplicate evidence that is already in the record⁴ or that does not address the relevant issue⁵ has no evidentiary value and does not constitute a basis for reopening a case.

In this case, relevant and pertinent new medical evidence did not accompany appellant's requests for reconsideration. The subsequent reports from by Dr. Skory did not provide a definitive diagnosis or specifically address causal relationship in a manner different than her previously considered reports.⁶ In an undated report, she did not address causal relationship. The information she provided was not new or relevant to appellant's claim.

In her July 16, 1999 report, Dr. Skory indicated she could not “ascribe appellant's condition with certainty.”⁷ She briefly mentioned appellant's work duties as including repetitive motion, but noted that they were at a level which would not be associated with the severe and prolonged nature of her disability. Dr. Skory also indicated that appellant's condition had

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁵ *Edward Matthew Diekemper*, 47 ECAB 306 (1996).

⁶ The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Robert P. Mitchell*, 52 ECAB ___ (Docket No. 97-2145, issued October 13, 2000); *Jacqueline M. Nixon-Steward*, 52 ECAB ___ (Docket No. 99-1345, issued November 3, 2000).

⁷ The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

progressed “beyond the course of repetitive stress injury” but was unable to offer an explanation for its cause. The information provided in this report was not new, relevant or pertinent.

These reports neither provided relevant or pertinent new evidence nor advanced a relevant legal argument that had not been previously considered by the Office. Additionally, appellant did not argue that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a merit review of her claim based on any of the requirements under section 10.606(b)(2).⁸

The December 17 and March 16, 1999 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁸ The Board notes that subsequent to the Office’s February 12, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).