

**United States Department of Labor
Employees' Compensation Appeals Board**

MARY A. PRIQUET, Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Saratoga, WY, Employer**

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**Docket No. 04-1002
Issued: August 5, 2004**

Appearances:
Mary A. Priquet, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 23, 2003. Appellant also appealed the January 16, 2004 decision which denied merit review. 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 has met her burden of proof in establishing that she sustained a left thumb injury in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On October 6, 2003 appellant, then a 57-year-old forest technician, filed a claim alleging that on September 30, 2003 she sustained a left thumb injury when she was helping her coworkers cover a sheep wagon. She did not stop work.

Appellant submitted a medical care authorization and attending physician's report dated October 14, 2003, prepared by a physician whose signature is illegible, who diagnosed left trigger thumb and recommended a work restriction of limited use of the left thumb. In a report dated October 22, 2003, Dr. Satoru T. Chamberlain, a Board-certified orthopedist, noted that in September appellant was carrying mattresses when she noticed clicking and catching in her thumb. He diagnosed trigger thumb with a dense nodule at the mouth of the annular portion of the pulley of the long flexor to the thumb and recommended surgical decompression of the thumb.

By letter dated November 13, 2003, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed left thumb injury.

Appellant submitted an undated narrative statement which advised that on September 30, 2003 she was assisting coworkers in placing a cover over a sheep wagon and she attempted to lift a metal leg and experienced sudden and sharp pain in her thumb. She indicated that she continued to work, but did not use her left hand. Appellant noted that she experienced persistent pain in her thumb for approximately a week and sought medical treatment. The physician immobilized her thumb in a splint and recommended decompression surgery. In her statement of November 18, 2003, she indicated that her physicians, in their reports may have confused her current injury with an incident which took place previously when she was carrying mattresses. The physicians inquired as to whether appellant experienced any other problems with her thumb and she advised that she had some soreness in the thumb after carrying a mattress some distance five to six weeks previously. She indicated that her thumb was sore for a couple of days but went away. Appellant stated that her current left thumb injury was the result of lifting a metal leg on September 30, 2003 while covering a sheep wagon.

In a decision dated December 23, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.¹ The Office specifically noted that there were inconsistencies in the history of injury appellant provided and that set forth by her treating physicians.

On an Office form dated January 6, 2004, appellant indicated that she requested reconsideration, but did not submit any additional evidence. By decision dated January 16, 2004, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions, nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United

¹ 5 U.S.C. §§ 8101-8193.

States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS – ISSUE 1

The Board finds that on September 30, 2003 appellant sustained a left thumb injury as a result of helping coworkers to put a cover over a sheep wagon. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained left trigger thumb causally related to the September 30, 2003 incident. Appellant submitted an attending physician's report dated October 14, 2003 which diagnosed left trigger thumb and recommended a work restriction of limited use of the left thumb. The physician, however, did not provide an opinion regarding the cause of appellant's left trigger thumb injury and a medical report that does not contain such opinion is insufficient to meet appellant's burden of proof.⁶

Also submitted was a treatment note from Dr. Chamberlain dated October 22, 2003, which provided a history of injury that appellant was carrying mattresses when she noticed clicking and catching in her thumb. However, this does not appear to be an accurate history of her left trigger thumb injury as appellant reported that she injured her thumb while attempting to cover a sheep wagon.⁷ Although appellant submitted a statement, dated November 18, 2003, indicating that the physician may have provided an incorrect account of how she sustained her injury, he provided no subsequent report explaining why his account of the injury was not

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁶ *See Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

consistent with that provided by appellant.⁸ Dr. Chamberlain diagnosed trigger thumb with a dense nodule at the mouth of the annular portion of the pulley of the long flexor to the thumb. However, he too did not provide an opinion regarding the cause of appellant's left trigger thumb injury.⁹ Furthermore, medical opinions based on an incomplete history have little probative value and are insufficient to establish causal relationship.¹⁰ Appellant, therefore, submitted insufficient evidence to meet her burden of proof to establish that her left thumb injury was caused by the September 30, 2003 employment incident.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,¹² which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) shows that [the Office] erroneously applied or interpreted a specific point of law; or

(ii) advances a relevant legal argument not previously considered by the (Office);
or

(iii) constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

Appellant's January 6, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office,

⁸ *Id.*

⁹ See *Michael E. Smith*, *supra* note 6.

¹⁰ See *Frank Luis Rembisz*, *supra* note 7.

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

¹³ 20 C.F.R. § 10.608(b).

appellant failed to submit any additional evidence with her reconsideration request. The Board, therefore, finds that the Office properly determined that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her January 6, 2004 request for reconsideration.¹⁴

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish her left thumb injury was caused by the September 30, 2003 employment incident and that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2004 and December 23, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ With her appeal to the Board, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). Appellant, however, retains the right to submit this evidence to the Office with a valid request for reconsideration.