

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

MALEA A. GRIFFEY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wichita, KS, Employer**

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**Docket No. 04-1434
Issued: April 11, 2005**

Appearances:

Beth Regier Foerster, Esq., for the appellant

James C. Gordon, Esq., for the Director

Oral Argument March 15, 2005

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 10, 2004 appellant timely filed an appeal from a February 4, 2004 decision by the Office of Workers' Compensation Programs, which denied her request for reconsideration. The Board has jurisdiction only over the February 4, 2004 decision pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

The case has been on appeal previously.¹ The Board noted that appellant had filed a claim for carpal tunnel syndrome which she related to her work as a letter sorting machine operator. The Office accepted her claim for carpal tunnel syndrome and tendinitis of both wrists. Appellant filed a claim for recurrence of disability effective May 21, 1993. In a May 9, 1997

¹ Docket No. 98-2092 (issued February 16, 2001).

decision, an Office hearing representative found that the evidence showed appellant could perform the duties of a light-duty position offered to her. In a February 16, 2001 decision, the Board concluded that the report of the Office medical adviser did not constitute medical evidence because his report was not based on medical evidence from another physician. The Board found that the report of the designated impartial medical specialist was in fact a second opinion that created a conflict in the medical evidence. The case was remanded with instructions to have appellant undergo examination by an impartial medical specialist.

On remand, the Office referred appellant to Dr. Lee Dorey, a Board-certified orthopedic surgeon, for an impartial medical examination. In a June 14, 2001 report, Dr. Dorey diagnosed bilateral carpal tunnel syndrome and cervical disc derangement with bilateral radiculopathy, most likely at the C6-7 level. He concluded that appellant's pain came from the cervical spine. Dr. Dorey commented that appellant quit because of an abnormal pain reaction. He stated that she could perform the duties of the job offered by the employing establishment. Dr. Dorey indicated that the main pain generator was the cervical spine with probable nerve root irritation through sinovertebral nerve connection.

In a September 19, 2001 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the weight of the medical evidence failed to establish that she was incapable of working the limited-duty job beginning May 19, 1993.

Appellant requested a hearing before an Office hearing representative which was conducted on May 28, 2002. At the hearing, appellant and her husband testified that, during the examination, a woman came in, stating that she needed to get an injection from Dr. Dorey to relieve cervical pain. The woman then praised Dr. Dorey's treatment. Appellant's husband expressed concern that the woman had come in at Dr. Dorey's request to advertise his treatment for neck problems.

Appellant submitted a June 14, 2002 report from Dr. Sergio Delgado, a Board-certified orthopedic surgeon, who stated that she continued to be symptomatic in both hands and arms. He indicated that appellant had a normal range of motion in the cervical region with no complaints of pain in the neck or radiating down the arms. He commented that appellant had no sensory dermatome deficiency involving the arms. Dr. Delgado noted that appellant had a positive Phalen's, reverse Phalen's and Tinel's signs involving both arms. He found thenar atrophy and decreased sensation along the median nerve distribution in both arms. Dr. Delgado indicated that appellant had subjective and objective signs of bilateral carpal tunnel syndrome. He reported that appellant had minor causalgia, a common form of reflex sympathetic dystrophy, of the right forearm, wrist and hand. He stated that appellant did not have cervical disease process or proximal nerve entrapment.

In a June 26, 2002 letter, appellant's attorney argued that Dr. Dorey's examination was not probative because he concentrated his examination around appellant's neck and had to be reminded to examine appellant for the carpal tunnel syndrome. Counsel noted that appellant had never complained of neck pain. She contended that the material worsening of appellant's condition after performing limited duty was shown by a new diagnosis of bilateral atrophy and causalgia from the carpal tunnel syndrome. She stated that Dr. Dorey had invited an unknown

neck patient into appellant's examination room to extol his neck injections which was grounds for protesting the impartial medical specialist's report as proper.

In a September 12, 2002 decision, the Office hearing representative found that Dr. Dorey had not supported his opinion with sufficient rationale and had not fully addressed the questions posed by the Office. The hearing representative remanded the case to obtain further medical explanation from Dr. Dorey or, if Dr. Dorey did not reply, refer appellant to another impartial medical specialist.

The Office referred appellant to Dr. David Clymer, a Board-certified orthopedic surgeon, for the impartial medical examination. In a December 2, 2002 report, Dr. Clymer stated that appellant's findings were consistent with bilateral carpal tunnel syndrome, somewhat worse on the right. He also noted that appellant had evidence of a minor causalgia involving the right arm. He found no cervical radiculopathy. Dr. Clymer indicated that he found no significant change in appellant's condition when comparing her current condition to her condition as described in 1992 after the carpal tunnel release surgery. He did not find atrophy in either hand. He commented that appellant's pain response was greater than what he would expect from the objective findings. Dr. Clymer suggested that appellant's anxiety and somatic personality might be contributing to some symptom magnification, causing her subjective sense of discomfort and activity intolerance to be somewhat greater than would be present based on the physiologic abnormalities alone. He indicated that the primary limiting factor in appellant's work tolerance appeared to be subjective causalgia-related pain in the upper right arm associated with any repetitive activities with the right arm and hand. Dr. Clymer stated that appellant was not totally disabled from all forms of employment and was not totally disabled in 1993. He recommended that appellant be restricted from repetitive motion with either arm, particularly the right arm. He concluded that appellant was able in 1993 to continue working at the limited-duty job. Dr. Clymer noted that appellant contended that the actual work requirements were above what was described by the employing establishment. He commented that there were apparent discrepancies between the job description and appellant's impression of the actual job requirements. He stated that he was unable to give an opinion on whether appellant's contentions were accurate as he had no direct knowledge of the actual job situation in 1993. Dr. Clymer stated that if appellant's work requirements actually went beyond the restrictions that were documented, then he would indicate that appellant was unable to perform the additional work duties and therefore was unable to perform the duties asked of her. He indicated that if, on the other hand, the facts supported that the actual job demands appropriately fell within the job requirements, appellant could perform those work activities described in the limited-duty offer and in his current restrictions on appellant.

In a January 7, 2003 decision, the Office denied appellant's claim for a recurrence of disability because the weight of the medical evidence, consisting of Dr. Clymer's report, failed to establish that she was incapable of performing the limited-duty work on May 19, 2003.

In a January 7, 2004 letter, appellant requested reconsideration. Counsel argued that Dr. Clymer's opinion expanded the medical conditions to include chronic causalgia. She contended that the restrictions set by Dr. Clymer exceeded the restrictions of the light-duty position offered to appellant. The attorney argued that the medical condition showed that appellant's condition was worsening over time but the Office had not evaluated all the medical

evidence in the January 7, 2003 decision. She stated the medical evidence established that the light-duty assignment accelerated the progression of appellant's carpal tunnel syndrome. The attorney argued that the Office should accept appellant's recurrence of disability claim and accepted the chronic causalgia condition as related to her accepted injury.

In a February 4, 2004 decision, the Office denied appellant's request for reconsideration on the grounds that appellant had not provided any new and relevant evidence to demonstrate her inability to return to her limited-duty job on or after May 19, 1993.

LEGAL PRECEDENT

The Board has jurisdiction over decisions of the Office issued within one year prior to the date of the appeal to the Board.² Therefore, on this appeal, the Board only has jurisdiction to consider the Office's February 4, 2004 nonmerit decision.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), 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 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

ANALYSIS

In her request for reconsideration, counsel argued that Dr. Clymer's report showed that appellant was unable to perform the light-duty job she held prior to her claimed recurrence of disability on May 19, 1993. However, she had previously raised this contention, prior to the Office hearing representative's decision and the Office's final merit decision on January 7, 2003, when it denied appellant's claim on the basis of Dr. Clymer's report. Appellant presented no new legal arguments on appeal that had not been previously considered by the Office in its merit decisions. Appellant did not present any new medical evidence which would compel a merit

² 20 C.F.R. § 501.3(d).

³ 20 C.F.R. § 10.608(b).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

review of her case. Appellant therefore failed to submit evidence or arguments that would require the Office to review this case on its merits.⁶

CONCLUSION

Appellant failed to establish that she was entitled to a merit review of the January 7, 2003 Office decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated February 4, 2004, be affirmed.

Issued: April 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ The impartial medical specialist stated that appellant's causalgia was related to her employment injuries. Appellant has not received an adverse decision denying her claim for causalgia. 20 C.F.R. § 501.3(a). That part of her case, therefore, is not before the Board on this appeal.