

she had difficulty obtaining medical reports in support of her case as she was unable to obtain an appointment with her doctor.

FACTUAL HISTORY

The Office accepted that on or before November 25, 2003 appellant, then a 31-year-old mail handler, sustained right carpal tunnel syndrome due to repetitive wrist motions in the performance of her duties. Appellant stopped work on November 28, 2003 and returned to full duty approximately one week later. She received compensation from December 1 to 8, 2003 on the daily rolls.

On January 17, 2004 appellant filed a notice claiming a recurrence of disability commencing December 27, 2003, which she attributed to repetitive motion at work, including “running [a] machine” and then “sorting mail” on December 26, 2003. The record indicates that appellant was in full duty status as of December 27, 2003. Appellant was off work until February 6, 2004, when she returned to limited duty. On March 9, 2004 appellant filed a notice claiming a recurrence of disability commencing February 7, 2004 due to lifting a tray of mail on February 6, 2004 that exceeded her physical limitations. She stopped work again and had intermittent absences through July 2004.¹

Appellant submitted several reports from Dr. Claire M. Iamele, an attending Board-certified physiatrist. On January 6, 2004 Dr. Iamele diagnosed right carpal tunnel syndrome based and left median neuritis based on electrodiagnostic testing. On February 9, 2004 Dr. Iamele related appellant’s complaints of greatly increased wrist pain on January 26, 2004. Dr. Iamele released appellant to light duty effective February 18, 2004, commenting that unspecified work activities caused pain.

In a March 9, 2004 report, Dr. Iamele opined that appellant was totally disabled for work from January 26 to March 9, 2004, due to right carpal tunnel syndrome. She noted that appellant was forced to return to work on March 10, 2004 in a light-duty position, which aggravated her symptoms. In an April 6, 2004 note, Dr. Iamele held appellant off work through April 9, 2004, as appellant had developed right elbow extensor tendinitis.

In an April 23, 2004 letter, the Office advised appellant of the additional evidence needed to establish her claims for recurrences of disability commencing December 27, 2003 and February 7, 2004. The Office explained that Dr. Iamele’s reports did not mention a recurrence of disability or a worsening of the accepted carpal tunnel syndrome. The Office afforded appellant 30 days to submit additional evidence.

¹ Beginning on April 28, 2004, appellant claimed recurrences of disability commencing April 6, 19 and May 18, 2004. In July 21, 2004 letters, the Office advised appellant that her claims for recurrences of disability commencing April 6, 9, 19 and May 18, 2004, were being made into new claim files. These claims are not before the Board on the present appeal. An August 19, 2004 letter from appellant to the Office mentions Claim No. 022055570. This claim is not before the Office on the present appeal. On June 1, 2004 appellant claimed that she sustained extensor tendinitis of the right forearm sustained on or before April 3, 2004. This claim is not before the Board on the present appeal.

In May 18, 2004 reports, Dr. Iamele diagnosed right carpal tunnel syndrome and right tennis elbow. She explained that appellant could not hyperextend or hyperflex her wrists and that “pushing and pulling [were] contraindicated.” Dr. Iamele recommended that appellant continue to wear a prescribed wrist splint.

By decision dated May 25, 2004, the Office denied appellant’s claim for a recurrence of disability commencing December 27, 2003, on the grounds that she submitted insufficient rationalized medical evidence to establish a spontaneous worsening of the accepted carpal tunnel syndrome. The Office found that Dr. Iamele did not explain how and why the accepted right carpal tunnel syndrome sustained on or before November 25, 2003 would totally disable appellant for work as of December 27, 2003.

By a second decision dated May 25, 2004, the Office denied appellant’s claim for a recurrence of disability commencing February 7, 2004 on the grounds that she submitted insufficient evidence to establish either a worsening of the accepted right carpal tunnel syndrome or a change in her light-duty requirements. The Office stated that Dr. Iamele’s reports did not document the claimed total disability for work commencing February 7, 2004.

On May 31, 2004 appellant requested reconsideration of the Office’s May 25, 2004 decision. She submitted additional evidence.

In a January 20, 2004 report, Dr. Iamele noted work restrictions. In an April 6, 2004 slip, Dr. Iamele released appellant to full duty as of that day. She diagnosed extensor tendinitis of the right forearm and elbow due to repetitive motion. Dr. Iamele also submitted reports dated from April 28 to July 15, 2004, opining that appellant’s new work duties, including sweeping mail, aggravated tendinitis in the right forearm. These reports did not address appellant’s condition as of December 27, 2003.

Appellant submitted a December 27, 2003 letter from a friend asserting that appellant missed work that day to assist her during a pregnancy-related illness. In a May 28, 2004 letter, appellant attributed the December 27, 2003 recurrence of disability to running a machine that cancelled stamped letters.

Appellant also submitted documents related to an administrative reassignment in September 2003 and attendance records for the periods December 29, 2003 to January 21, 2004 and May 18 to June 7, 2004. She also submitted duplicates of Dr. Iamele’s January 20, April 6 and 28, 2004 reports.

By decision dated September 9, 2004, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was repetitious or irrelevant. The Office found that Dr. Iamele’s reports were either duplicates of evidence previously of record or did not discuss her condition as of December 27, 2003, the date of the alleged recurrence of disability. The Office further found that several of Dr. Iamele’s reports in April and June 2004

addressed recurrences in 2004, not the claimed recurrence of disability commencing December 27, 2003.²

In a December 30, 2004 letter, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review. She asserted that, as the Office accepted the original injury, it could not then deny a claim for recurrence of disability related to that injury.³ Appellant submitted occupational therapy notes dated from May to July 2004, pertaining to right carpal tunnel syndrome and right tennis elbow.

By decision dated February 22, 2005, the Office denied appellant's hearing request on the grounds that she had previously requested reconsideration. The Office denied appellant's request for a hearing on the grounds that the issue involved could be addressed equally well by requesting reconsideration and submitting new evidence to the Office.⁴

LEGAL PRECEDENT -- ISSUE 1

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁵ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁶

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's

² The record contains a July 20, 2004 decision denying appellant's May 31, 2004 request for reconsideration. The text of the decision appears nearly identical to that of the September 9, 2004 decision. Therefore, it appears that the July 20, 2004 decision may have been a draft version that was not actually issued.

³ In a second December 30, 2004 note, appellant requested "reconsideration." The record indicates that the Office interpreted this note as part of the December 30, 2004 request for a hearing, not as a separate request for reconsideration.

⁴ Following issuance of the Office's February 22, 2005 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

⁶ Federal (FECA) Procedure Manual, Chapter 2.1500.3 (May 1997); *supra* note 5; *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

conclusion.⁷ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right carpal tunnel syndrome on or before November 25, 2003. On January 17, 2004 she claimed a recurrence of disability commencing December 27, 2003. She attributed symptoms to operating equipment and sorting mail on December 26, 2003. Thus, appellant asserted not that the accepted carpal tunnel syndrome spontaneously recurred, but that new work factors on December 26, 2003 aggravated the original injury. These new work factors break the chain of causation stemming from the accepted November 25, 2003 injury.⁹ The claim is one of a new injury that date.

In support of her claim for recurrence of disability, appellant submitted reports from Dr. Iamele, an attending Board-certified physiatrist, describing the onset of right carpal tunnel syndrome. However, none of these reports specifically mentions a spontaneous worsening of the condition as of December 27, 2003 or found that appellant totally disabled for work as of that date. Thus, appellant submitted insufficient medical evidence to establish the claimed recurrence of disability commencing December 27, 2003.

The Office properly found that appellant submitted insufficient factual and medical evidence to meet her burden of proof in establishing the claimed recurrence of disability commencing December 27, 2003.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹⁰ This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹¹

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁹ *Donald T. Pippin*, *supra* note 6.

¹⁰ *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

ANALYSIS -- ISSUE 2

As noted the Office accepted that appellant sustained right carpal tunnel syndrome on or before November 25, 2003. Following a return to full duty, appellant was again off work from late December 2003 to February 5, 2004. She returned to limited duty on February 6, 2004. On March 9, 2004 appellant filed a claim for a recurrence of disability commencing February 7, 2004, which she attributed to lifting a tray of mail on February 6, 2004. In order to prevail, appellant must demonstrate either a change in the nature and extent of her accepted right carpal tunnel syndrome or in her light-duty job requirements.¹²

Appellant submitted several reports from January to May 2004 by Dr. Iamele, an attending Board-certified physiatrist, discussing her right carpal tunnel syndrome. However, these reports do not mention a worsening of appellant's condition as of February 7, 2004. In a February 9, 2004 report, the medical evidence most contemporaneous to the claimed recurrence of disability, Dr. Iamele related appellant's complaints of greatly increased wrist pain on January 26, 2004. While Dr. Iamele opined that unspecified work activities caused appellant "pain" in February 2004, she did not state that appellant's condition worsened as of February 7, 2004 such that she could no longer perform her light-duty position. As Dr. Iamele's opinion lacks medical rationale, it is of insufficient probative value to establish the causal relationship asserted.¹³

Although appellant did work on February 6, 2004 Dr. Iamele stated in a March 9, 2004 report that appellant was totally disabled for work from January 26 to March 9, 2004, due to right carpal tunnel syndrome. Dr. Iamele's reports did not reflect that appellant returned to work on February 6, 2004. Thus, Dr. Iamele's opinion is of diminished value in establishing appellant's claim for a recurrence of disability as her reports are based on an incomplete factual history.¹⁴

Appellant asserted that her duties on February 6, 2004 exceeded her light-duty restrictions. However, she submitted no evidence in corroboration of this allegation. Thus, appellant submitted insufficient evidence to establish a change in her light-duty position such that she could no longer perform it as of February 7, 2004.

The Board finds that the arguments and evidence submitted by appellant in support of her claim are insufficient to establish that she sustained a recurrence of total disability as alleged.

LEGAL PRECEDENT -- ISSUE 3

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal

¹² See *supra* note 10.

¹³ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

¹⁴ *Patricia J. Glenn*, 53 ECAB 159 (2001).

argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁵ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁶ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards sets forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁷

ANALYSIS -- ISSUE 3

The Office denied appellant's claim for recurrence of disability by May 25, 2004 decision, finding that she submitted insufficient rationalized medical evidence to establish a causal relationship between accepted right carpal tunnel syndrome sustained on or before November 25, 2003 and her medical condition as of February 7, 2004. Appellant requested reconsideration in a May 31, 2004 letter and submitted additional evidence.

Appellant submitted reports dated from January 20 to July 15, 2004 by Dr. Iamele, diagnosing right carpal tunnel syndrome and tendinitis of the right forearm. However, these reports do not address the relevant issue of appellant's medical condition as of February 7, 2004 and whether it worsened such that she could no longer perform her light-duty position. Thus, Dr. Iamele's reports are not relevant to the claim and are therefore insufficient to warrant reopening the case for a merit review.

Appellant also submitted a May 28, 2004 letter and a letter from a friend regarding a December 27, 2003 work absence, documents regarding a September 2003 reassignment and attendance records for the periods December 29, 2003 to January 21, 2004 and May 18 to June 7, 2004. These documents are irrelevant to the claimed February 7, 2004 recurrence of disability and are thus insufficient to warrant a merit review.

Appellant also submitted duplicates of Dr. Iamele's January 20, April 6 and 28, 2004 reports previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening the case.¹⁸

Thus, the Office properly denied appellant's May 31, 2004 request for reconsideration as the evidence submitted in support thereof was insufficient to warrant a merit review as it was either irrelevant or repetitious.

¹⁵ 20 C.F.R. § 10.606(b)(2) (2003).

¹⁶ 20 C.F.R. § 10.608(b) (2003).

¹⁷ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

¹⁸ *Denis M. Dupor*, 51 ECAB 482 (2000); *Howard A. Williams*, 45 ECAB 853 (1994); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

LEGAL PRECEDENT -- ISSUE 4

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹⁹ Record by a representative of the Secretary.²⁰ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.²¹

ANALYSIS -- ISSUE 4

On December 30, 2004 appellant requested an oral hearing pursuant to the Office's May 25, 2004 decisions denying her claims for recurrence of disability. However, she had previously requested reconsideration on May 31, 2004. Therefore, under section 8124(b)(1) of the Act, she was not entitled to a hearing as a matter of right.

The Office then exercised its discretion and determined that her reconsideration request could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the claimed recurrences of disability were causally related to the accepted November 25, 2003 work injury. The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's hearing request. Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and facts of this case.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of disability commencing December 27, 2003 as she submitted insufficient rationalized medical evidence to establish a spontaneous worsening of the accepted right carpal tunnel syndrome. The Board further finds that the Office properly denied appellant's claim for a recurrence of disability commencing February 7, 2004, as she submitted insufficient evidence demonstrating a change either in the nature and extent of her light-duty position or a worsening of the accepted right carpal tunnel syndrome such that she could no longer perform her light-duty position. The Board finds that the Office properly denied appellant's request for a merit review as she submitted insufficient evidence to warrant a merit review. The Board also finds that the Office properly denied appellant's request for an oral hearing as she has previously requested reconsideration.

¹⁹ 5 U.S.C. § 8124(b)(1).

²⁰ 20 C.F.R. §§ 10.616, 10.617.

²¹ *Claudio Vasquez*, 52 ECAB 496 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 22, 2005, September 9, 2004 and the two decisions dated May 25, 2004 are affirmed.

Issued: November 2, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board