

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

DORIS R. SIMMONS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 05-1276
Issued: October 4, 2005**

Appearances:
Doris R. Simmons, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 24, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 10, 2005, denying her claim for a traumatic injury occurring on October 20, 2004, and a nonmerit decision dated April 20, 2005, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim and the nonmerit issue.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on October 20, 2004; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 4, 2003 appellant, then a 48-year-old mail handler, filed a traumatic injury claim for an injury occurring on November 3, 2003 where she alleged that she hurt her right

wrist as the “flat tubs [were] too heavy.”¹ On December 16, 2003 the Office accepted the condition of a right wrist strain. Appellant received appropriate compensation.

On July 10, 2004 appellant filed an occupational claim alleging that she developed carpal tunnel syndrome in her right wrist as a result of her employment duties. She first realized her condition was caused or aggravated by her employment on May 3, 2004.² On September 8, 2004 the Office accepted the condition of right carpal tunnel syndrome and authorized a right carpal tunnel release, which appellant underwent on August 18, 2004. In a September 23, 2004 report, appellant’s attending physician, Dr. Mitchell B. Rotman, a Board-certified orthopedic surgeon, advised that she could return to full duty September 27, 2004. Appellant returned to work on September 27, 2004.

On November 10, 2004 appellant filed a traumatic injury claim alleging that, on October 20, 2004, she lifted heavy trays that caused numbness and a sharp pain to her right wrist.³ Her family physician, Dr. Joule N. Stevenson, a Board-certified internist, found appellant disabled from October 25 to November 29, 2004 and opined that she could return to work with lifting restrictions of no more than 20 pounds. In a November 4, 2004 report, Dr. Rotman noted appellant’s complaints and her problem lifting heavier weights. He advised that appellant’s nerve conduction studies showed some improvement and opined that she could return to regular work without restrictions.

In a November 22, 2004 report, Dr. Manish Suthar, a Board-certified physiatrist, noted appellant’s original work-related injury to her right wrist on November 3, 2003, her subsequent condition of carpal tunnel syndrome and carpal tunnel release on August 18, 2004. After a period of three weeks of physical therapy, she was released back to work with no restrictions. On October 20, 2004 appellant stated that she lifted a variety of mail crates and had picked one up which weighed approximately 60 pounds and felt a tug and pull over her incision along with immediate pain. Appellant experienced continued discomfort in that area and continued wearing her carpal tunnel splints for relief and her primary physician reduced her work status. An impression of status post carpal tunnel release and postsurgical right wrist pain, possibly due to a slight inflammatory reaction secondary to a ligament strain was provided. Dr. Suthar recommended that appellant continue to utilize a carpal tunnel splint, take anti-inflammatories to reduce swelling, work with a lifting restriction of no more than 20 pounds and use the carpal tunnel splint. He additionally requested that appellant undergo physical therapy two times a week for four weeks.

In a letter dated December 7, 2004, the Office advised appellant that the evidence was insufficient to establish her claim. It requested that she provide a detailed narrative report from her attending physician which included a firm diagnosis from the October 20, 2004 injury, the

¹ The Office assigned the claim file number 11-2019005.

² The Office assigned the claim file number 11-2023642.

³ The Office assigned the claim file number 11-2025904.

treatment provided, the prognosis and the period and extent of disability. The Office additionally stated:

“Appellant’s physician must also indicate whether and explain why the condition diagnosed is believed to have been caused or aggravated by your claimed injury on October 20, 2004 rather than being merely an exacerbation of symptoms related to your underlying carpal tunnel syndrome and/or recovery from surgery. In other words, why is this a new injury?”

In a December 13, 2004 statement, appellant noted that she returned to regular work without restrictions on September 27, 2004 following her right carpal tunnel surgery and experienced problems on October 20, 2004 when she lifted a letter tray that weighed over 40 pounds. Appellant resubmitted Dr. Suthar’s November 22, 2004 report. In a December 13, 2004 work status report, Dr. Suthar diagnosed hand pain and carpal tunnel syndrome, restricted appellant to lifting no more than 20 to 25 letter trays throughout the day with a maximum lifting of 20 pounds and requested physical therapy two times per week for four weeks. A copy of material regarding facet joint disorders was provided along with copies of appellant’s medical reports and restrictions from her previous claims.

By decision dated January 10, 2005, the Office denied appellant’s claim. The Office found that the event occurred as alleged but no medical evidence supported that the status of her underlying condition, already accepted under claim file number 11-2023642, had changed after the work incident of October 20, 2004.

In a March 18, 2005 letter, appellant requested reconsideration and asserted that her right hand had not healed and was aggravated when she picked up the weight of the letter tray on October 20, 2004.

By decision dated April 20, 2005, the Office denied appellant’s request for reconsideration, finding that she failed to submit new and relevant evidence or legal contentions not previously considered.⁴

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act⁵ 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 States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁶ These are the essential elements of each

⁴ The Board notes that, on June 2, 2005, the Office doubled appellant’s claims under 11-2023642 and 11-2025904 into one master file under claim number 11-2019005.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹⁰

In order to satisfy her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.¹¹ 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 employee's alleged injury and the employment incident.¹² The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.¹³

ANALYSIS -- ISSUE 1

Appellant alleged that on October 20, 2004 she reinjured her right hand, for which she underwent carpal tunnel surgery, when she lifted a heavy tray at work. The October 20, 2004 incident was not contested and the Board finds that appellant has established that the incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence is sufficient to establish that she sustained a compensable injury as a result of the incident.

The Board finds that appellant has not established that the October 20, 2004 employment incident resulted in an injury. The question of whether an employment incident caused an injury is generally established by medical evidence.¹⁴ Appellant submitted a report dated

⁷ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 6.

⁸ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *Gary J. Watling*, *supra* note 9.

¹¹ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹² *Gary J. Watling*, *supra* note 9.

¹³ See *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

¹⁴ See *John W. Montoya*, *supra* note 13.

November 22, 2004 from Dr. Suthar, who addressed her right wrist carpal tunnel surgery and her complaint to the area over the incision when she lifted a heavy mail crate on October 20, 2004. He provided an impression of status post carpal tunnel release and postsurgical right wrist pain possibly due to a slight inflammatory reaction secondary to a ligament strain. His opinion, however, that appellant's right wrist pain might possibly be due to inflammatory reaction secondary to a ligament strain does not specifically address whether the October 20, 2004 incident caused an injury. Dr. Suthar did not otherwise state that the lifting on October 20, 2004 caused a ligament strain nor did he provide adequate rationale explaining how the diagnosed condition resulted from the October 20, 2004 lifting incident or worsened her underlying carpal tunnel condition. Other medical evidence of record also does not support that the October 20, 2004 incident caused or aggravated a new injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁵ The Office's December 7, 2004 letter informed appellant of the medical evidence necessary to establish her claim, but she did not submit the necessary evidence.

As appellant has not submitted rationalized medical evidence to support her allegation that she sustained an injury due to lifting a heavy tray at work on October 20, 2004, she has failed to meet her burden of proof to establish her claim.¹⁶

LEGAL PRECEDENT -- ISSUE 2

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 argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹⁷ Section 10.608(b) provides that, when an application for reconsideration 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.¹⁸

ANALYSIS -- ISSUE 2

Appellant's March 18, 2005 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).¹⁹ Appellant also did not submit any

¹⁵ *Donald T. Pippin*, 54 ECAB ___ (Docket No. 03-205, issued June 19, 2003).

¹⁶ This decision of the Board only adjudicates whether appellant established a new traumatic injury occurring on October 20, 2004.

¹⁷ 20 C.F.R. § 10.606(b)(2).

¹⁸ 20 C.F.R. § 10.608(b).

¹⁹ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii).

relevant and pertinent new evidence not previously considered by the Office. Inasmuch as appellant did not submit any “relevant and pertinent new evidence,” she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).²⁰

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 20, 2004 and properly refused to reopen appellant’s claim for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 20 and January 10, 2005 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: October 4, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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

²⁰ 20 C.F.R. § 10.608(b)(2)(iii).