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MARY E. STEWART, Appellant)	
)	
and)	Docket No. 06-553
)	Issued: May 9, 2006
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an employment-related upper extremity condition; and (2) whether the Office properly

denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 8, 2005 appellant, then a 49-year-old mail carrier, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to her job duties. She submitted a November 2, 2004 report in which Dr. Vinod Sahgal, an attending Board-certified physical medicine and rehabilitation physician, diagnosed cervicalgia and carpal tunnel syndrome.

In a letter dated March 23, 2005, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted an undated statement in which she indicated that between 1979 and 2000 she worked as a mail carrier and parcel post collection truck driver. She performed such duties as lifting heavy bags of mail, carrying and casing mail, loading and unloading mail from vehicles, and opening and closing vehicle doors.¹ Appellant stated that she experienced pain in both upper extremities.

By decision dated May 5, 2005, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related upper extremity condition.

Appellant submitted a May 10, 2005 report in which Dr. Sahgal stated, "[Appellant] is under my care for right arm, shoulder, wrist and neck pain. Diagnosed as carpal tunnel syndrome with [electromyogram] testing and considered to be a permanent injury."

By merit decision dated October 20, 2005, the Office affirmed its May 23, 2005 decision.

Appellant submitted a form, dated and signed November 15, 2005 and received by the Office on November 18, 2005, which requested reconsideration of the Office's prior decisions. She did not submit any evidence or argument in support of her reconsideration request.

By decision dated November 29, 2005, the Office denied appellant's request for further merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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

¹ Appellant indicated that she has been performing limited-duty work since 2000.

² 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.⁵

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained an upper extremity condition due to the duties of her job. However, she did not submit sufficient medical evidence to establish that her employment caused such a condition. Although she established employment factors in the form of performing such repetitive duties as lifting heavy bags of mail and carrying and casing mail, she did not submit medical evidence showing that she sustained a specific condition due to these factors.

Appellant submitted a November 2, 2004 report in which Dr. Sahgal, an attending Board-certified physical medicine and rehabilitation physician, diagnosed cervicgia and carpal tunnel syndrome. She also submitted a May 10, 2005 report in which Dr. Sahgal stated, "[Appellant] is under my care for right arm, shoulder, wrist and neck pain. Diagnosed as carpal tunnel syndrome with [electromyogram] testing and considered to be a permanent injury." These reports, however, are of diminished probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁶ Dr. Sahgal did not identify the cause of appellant's carpal tunnel syndrome, he did not note any awareness of her job duties and did not identify whether it affected the left arm, the right arm or both arms. In addition, he did not provide

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

any specific findings of diagnostic testing. Appellant did not submit any medical report relating her claimed condition to the accepted employment factors and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS -- ISSUE 2

In connection with her November 2005 reconsideration request, appellant only submitted a form which effectuated her request for reconsideration of the Office's prior decisions. She did not submit any additional evidence or argument in support of her claim. Consequently, appellant submitted no evidence or argument which could serve as a basis for reopening her claim for review on the merits.

Appellant has not established that the Office improperly denied her request for further review of the merits of its October 20, 2005 decision under section 8128(a) of the Act, because she did not submit evidence and argument showing that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related upper extremity condition. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 29, October 20 and May 5, 2005 decisions are affirmed.

Issued: May 9, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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