

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

B.T., Appellant

and

**U.S. POSTAL SERVICE, LOS ANGELES BULK
MAIL CENTER, Bel Air, CA, Employer**

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**Docket No. 06-1424
Issued: October 27, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2006 appellant filed a timely appeal from a July 18, 2005 decision of the Office of Workers' Compensation Programs denying her occupational disease claim and an April 27, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim and over the nonmerit decision.¹

ISSUES

The issues are: (1) whether appellant has established that she sustained right lateral epicondylitis in the performance of duty; and (2) whether the Office properly denied appellant's April 19, 2006 request for reconsideration.

¹ The record also contains a May 3, 2006 letter decision approving an attorney's fee with appellant's agreement. Appellant did not appeal this decision to the Board.

FACTUAL HISTORY

On February 1, 2005 appellant, then a 49-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a right elbow condition in the performance of duty. She alleged that, in August 2003, she was removed from rehabilitation status and assigned to a keying position in violation of her medical restrictions. Appellant subsequently resumed a light-duty position. She described preexisting occupational injuries involving arthritis of both thumbs and carpal tunnel syndrome. Appellant was on light duty at the time of the claim due to the prior injuries. She did not stop work.²

Appellant submitted reports from Dr. Kenneth R. Sabbag, an attending Board-certified orthopedic surgeon. In a February 23, 2004 report, Dr. Sabbag noted that appellant was a “right-hand dominant postal clerk who has had pain in both hands for a long time and “sort[ed] mail several hours per day. [Appellant] ha[d] pain in the right elbow and” both thumbs and a history of bilateral carpal tunnel surgery. On examination, Dr. Sabbag found focal tenderness at the lateral epicondyle, a full range of right elbow motion, negative ulnar and median nerve compression tests and a negative elbow flexion test. He diagnosed right lateral epicondylitis and administered a corticosteroid injection.

In reports from May 3 to October 14, 2004, Dr. Sabbag recommended a right lateral epicondyle release. In a November 11, 2004 report, he opined that the “right lateral epicondylitis [was] industrially related.” While Dr. Sabbag found decreased tenderness in the right elbow on December 9, 2004 examination, he stated that “statistically the pain will recur.”

The Office associated medical evidence from appellant’s prior upper extremity claims in the present record. In an October 5, 1992 report, Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, discussed appellant’s carpal tunnel syndrome. In an October 15, 2003 report, Dr. Ibrahim Yashruti, Board-certified orthopedic surgeon and second opinion physician on File No. 1302063595, opined that bilateral degenerative joint disease of the carpometacarpal joint of both thumbs was work related. Neither report addressed appellant’s right elbow.

In a February 16, 2005 letter, the Office advised appellant of the additional evidence needed to establish her claim, including a rationalized report from her physician explaining how and why specific factors of her federal employment would cause the claimed right elbow condition. The Office also requested additional information regarding the specific work factors alleged to have caused the claimed right elbow condition.

In a March 3, 2005 report, Dr. Sabbag noted focal tenderness at the right lateral epicondyle with positive provocative testing for right lateral epicondylitis. He again recommended surgery as conservative measures had failed. Dr. Sabbag opined that the right lateral epicondylitis was related to “repetitive use ... in her course of employment” at the employing establishment.

² In a February 10, 2005 letter, the employing establishment controverted the claim as appellant did not explain “how and where this injury happened.”

By decision dated March 28, 2005, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient rationalized medical evidence to establish that her claimed right elbow condition was related to work factors.

In a March 30, 2005 letter, appellant requested reconsideration. She asserted that the right elbow condition developed as she was assigned keying duties in violation of her light-duty status.

In response, the Office copied documents from appellant's other upper extremity claims³ into the present case record under File No. 13-2122303. In a June 19, 1996 report, Dr. Charles Sadler, a Board-certified orthopedic surgeon who performed a "referee examination," noted appellant's complaints of right hand and wrist pain radiating to the right elbow. A September 4, 2002 employing establishment form indicates that appellant was involuntarily assigned a residual job slot. The Office referred appellant for a second opinion on September 22, 2003. In an October 31, 2003 letter, the Office accepted bilateral degenerative disease of the carpometacarpal joints of both thumbs.

By decision dated April 12, 2005, the Office denied modification of the March 28, 2005 decision on the grounds that the evidence submitted was insufficient. The Office noted reviewing appellant's other cases: File No. 130888104 accepted for bilateral carpal tunnel syndrome; File No. 132063595 accepted for bilateral osteoarthritis of the hands; and File No. 130903499 regarding an unspecified condition. The Office noted copying reports from these files into the current case record but that these reports "d[id] not mention the elbow and [were] therefore irrelevant to this claim." The Office found that Dr. Sabbag failed to provide medical rationale supporting that "the condition of right lateral epicondylitis was industrially related." The Office also found that appellant did not submit a description of her work duties.

In an April 15, 2005 letter, appellant requested reconsideration. She attributed the right elbow condition to repetitive upper extremity motion in violation of her work restrictions, including lifting her arms upward to place mail in containers and lifting mail over her head to direct mail sleds.

By decision dated July 18, 2005, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that appellant's April 15, 2005 letter was "insufficient to warrant modification of the March 29 and April 12, 2005 decisions."⁴

In an April 19, 2006 letter, appellant requested reconsideration. She submitted a September 24, 1992 rehabilitation job offer from File No. 132063595 and February 28, 2006 hospital discharge instructions to "change dressing on Friday." The discharge instructions do not

³ The file numbers on the documents were not scanned into the current case record.

⁴ Although the Office's July 18, 2005 decision intermingled merit and nonmerit standards of review, the Office included full appeal rights and termed the decision a merit denial of modification.

appear to have been signed or reviewed by a physician. Appellant also submitted copies of evidence previously of record.

By decision dated April 27, 2006, the Office denied reconsideration on the grounds that appellant did not submit new, relevant evidence or raise substantive legal questions.

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

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) 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 causal relationship is generally 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 medial 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.⁸

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained right lateral epicondylitis due to repetitive motion and lifting mail overhead in the performance of duty. In support of her claim, she submitted reports from Dr. Sabbag, an attending Board-certified orthopedic surgeon. In a November 11,

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

2004 report, Dr. Sabbag opined that the “right lateral epicondylitis [was] industrially related.” In a March 3, 2005 report, he opined that the right lateral epicondylitis was related to “repetitive use ... in her course of employment” at the employing establishment. While Dr. Sabbag generally concluded that appellant’s right lateral epicondylitis was related to work factors, he did not explain how and why those factors would cause the claimed condition. He did not adequately explain how the nature of appellant’s work duties would cause or contribute to the diagnosed condition. Therefore, the Board finds that Dr. Sabbag’s opinion is not sufficiently rationalized to meet appellant’s burden of proof in establishing her claim⁹

The Board notes that in a February 16, 2005 letter, the Office specifically advised of the need to submit a rationalized report from her physician explaining how and why specific factors of her federal employment would cause the claimed right elbow condition. However, appellant did not submit such evidence. Therefore, she failed to meet her burden of proof.

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) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁰ 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.¹¹

In support of his request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his burden of proof.¹² Appellant need only submit relevant, pertinent evidence not previously considered by the Office.¹³ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant’s application for reconsideration and any evidence submitted in support thereof.¹⁴

ANALYSIS -- ISSUE 2

In an April 19, 2006 letter, appellant requested reconsideration of the Office’s July 18, 2005 decision denying modification of prior denials of her claim for right lateral epicondylitis.

⁹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ 20 C.F.R. § 10.608(b).

¹² *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹³ See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁴ *Annette Louise*, 54 ECAB 783 (2003).

She submitted a September 24, 1992 rehabilitation job offer and February 28, 2006 hospital discharge instructions. Appellant also submitted copies of evidence previously of record. The Office denied reconsideration by an April 27, 2006 decision on the grounds that appellant did not submit new, relevant evidence or raise substantive legal questions.

The hospital discharge instructions were not signed or reviewed by a physician. Thus, they are not medical evidence for the purposes of this case and are irrelevant to the underlying medical issue in the claim.¹⁵ Similarly, the rehabilitation job offer does not address the relevant medical issue of causal relationship. Evidence which is irrelevant to the claim is insufficient to warrant a merit review of the case.¹⁶ Regarding the copies of evidence previously of record, the Board has held that repetitive evidence is insufficient to warrant reopening a claim for merit review.¹⁷

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office. She is not entitled to a review of the merits of her claim. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that she sustained right elbow epicondylitis in the performance of duty as alleged. The Board further finds that the Office properly denied a merit review of appellant's claim pursuant to her April 19, 2006 request for reconsideration.

¹⁵ *Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 2005); *Richard F. Williams*, 55 ECAB ____ (Docket No. 03-1176, issued February 23, 2004); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁶ *Mark H. Dever*, *supra* note 13.

¹⁷ *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 27, 2006 and July 18, 2005 are affirmed.

Issued: October 27, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board