United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 07-311**
	)	**Issued: May 31, 2007**
U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, Employer	)	

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 November 15, 2006 appellant filed a timely appeal from a June 13, 2006 merit decision of the Office of Workers' Compensation Programs denying her occupational injury claim and an August 16, 2006 nonmerit decision denying her request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she developed an occupational disease in the performance of duty; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 9, 2005 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that her carpal tunnel condition was the result of the repetition in casing and delivery of mail. She first noticed her condition and became aware that it was caused or aggravated by her employment on July 25, 2005. Appellant submitted an August 26, 2006 report

from Dr. Rafael V. Urrutia, Jr., a Board-certified orthopedic surgeon, who noted that objective studies in December 2003 and July 2005 confirmed bilateral carpal tunnel syndrome. Dr. Urrutia advised that appellant had been treated for problems relating to carpal tunnel for several years that was probably related to the repetitive activities at her job.

In a September 24, 2005 letter, the Office requested that appellant provide additional factual evidence along with medical reports containing a rationalized medical opinion on the cause of her condition. The Office allowed appellant 30 days to provide the additional evidence.

By decision dated October 25, 2005, the Office denied appellant's claim finding that the work condition alleged to have caused her injury was not established.

On May 8, 2006 appellant disagreed with the Office's October 25, 2005 decision and requested reconsideration. Office notes from Dr. Urrutia dated July 25 and October 24, 2005 were received. An October 24, 2005 report noted that appellant's nerve conduction studies of April 29, 2002 and July 1, 2005 were consistent with bilateral carpal tunnel syndrome, the right side worse than the left. A duplicate copy of Dr. Urrutia's August 26, 2005 report was also submitted.

By decision dated June 13, 2006, the Office modified its prior decision and found that appellant had established that her job involved repetitive motion. However, the claim was denied on the basis that causal relationship was not established between the established work factor and her claimed carpal tunnel condition.

Appellant requested reconsideration of the Office's June 13, 2006 decision. In a July 24, 2006 report, Dr. Urrutia confirmed that appellant had bilateral carpal tunnel syndrome, right side worse than the left. He advised that appellant had been seen for a long period of time because of her carpal tunnel problem and that it was probably related to the repetitive activities of her job.

By decision dated August 16, 2006, the Office denied appellant's request for reconsideration finding that the evidence submitted in support of the request did not warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2] These are the essential elements of each

[1] 5 U.S.C. §§ 8101-8193.

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

compensation claim regardless of whether the claim is predicated upon a traumatic injury and an occupational disease.[3]

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;[4] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[5] and (3) medical evidence establishing 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.[6]

Generally, causal relationship may be established only by rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that 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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS -- ISSUE 1

The Office found that appellant established that her job consisted of repetitive motion but that the medical opinion evidence was insufficient to establish a causal relationship between her diagnosed condition of bilateral carpal tunnel syndrome and her work factors. The Board finds that there is no rationalized medical opinion provided on the causal relationship of appellant's carpal tunnel condition to her employment.

Dr. Urrutia's July 25 and October 24, 2005 reports noted treatment appellant underwent for her carpal tunnel condition. However, he did not address how her carpal tunnel condition was caused or aggravated by factors of her employment. On August 26, 2005 Dr. Urrutia stated that appellant had been treated for carpal tunnel problems for several years and opined that it was "probably" related to her repetitive work duties. His opinion regarding the causal relationship

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

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[6] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *Judy C. Rogers*, 54 ECAB 693 (2003).

between appellant's carpal tunnel condition and her employment is speculative and, thus, of diminished probative value.[11] He did not explain how the repetitive motion required in appellant's employment would cause or contribute to her carpal tunnel condition. Due to the lack of medical rationale Dr. Urrutia's opinion is insufficient to establish appellant's burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a carpal tunnel condition causally related to factors of her federal employment as a letter carrier. Appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The Act[12] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[13]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[15] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. The Board finds that 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).[17]

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[11] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006); *Cecelia M. Corley*, 56 ECAB ___ (Docket No. 05-324, issued August 16, 2005).

[12] 5 U.S.C. § 8101 *et seq*.

[13] 20 C.F.R. § 10.605.

[14] 20 C,F,R, § 10.606.

[15] *Donna L. Shahin*, 55 ECAB 192 (2003).

[16] 20 C.F.R. § 10.608.

[17] 20 C.F.R. § 10.606(b)(2).

Appellant also failed to satisfy the third requirement listed in section 10.606(b)(2). She did not submit any relevant and pertinent new evidence not previously considered by the Office. Appellant submitted a July 24, 2006 report from Dr. Urrutia. This report, however, is duplicative of the physician's August 26, 2005 report, which noted that appellant was being seen for carpal tunnel problems and which opined that it was "probably" related to her repetitious activities on her job. Thus, Dr. Urrutia's report is repetitious of his earlier opinion on causal relationship which had been considered by the Office. 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.[18]

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.

CONCLUSION

Appellant has not met her burden of proof in establishing that she developed an occupational disease in the performance of duty, and that the Office properly denied her request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 16 and June 13, 2006 are affirmed.

Issued: May 31, 2007
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

[18] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).