United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 07-2429**
	)	**Issued: March 14, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 2, 2006 denying her occupational injury claim and a December 1, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 14, 2006 appellant, a 45-year-old mail handler, filed an occupational disease claim, Form CA-2, alleging that she developed a sore elbow as a result of her employment

duties. She first became aware that her condition was related to her employment on June 14, 2006.

Appellant submitted a July 7, 2006 report of an initial consult with Dr. Bryan L. Weddle, a chiropractor. He stated that appellant's daily duties as a mail handler for the past eight years had included transferring as many as 5,000 mail trays (weighing from 1 to 20 pounds) from a belt to a wire cage. Appellant informed Dr. Weddle that she began to experience left elbow pain at work on June 20, 2006. She reported the pain level in her elbow to be 5/10 while grasping and lifting, with pain radiating down to her left wrist. Dr. Weddle indicated that appellant had sustained a previous injury to her left shoulder the previous year. He found decreased grip strength on the left (40 pounds), as opposed to the right (60 pounds). Range of motion examination of bilateral elbows revealed: flexion of 135 degrees; extension of 0 degrees; pronation of 80 degrees; and supination of 80 degrees.

Appellant submitted a July 7, 2006 treatment plan, bearing an illegible signature, reflecting a diagnosis of right and left lateral epicondylitis, left cubital tunnel syndrome, right and left triceps tendinitis, and left bicipital tendinitis. The history of injury was reported as "repetitive work injury to right and left elbows." The plan recommended physical therapy three times per week, including joint mobilization, ultrasound and therapeutic exercise of both elbows, as well as myofascial release of both forearms, in order to lessen muscle tightness and edema around the tendons.

On July 17, 2006 Dr. Weddle recommended continuation of appellant's current treatment plan. Appellant submitted physicians' notes, bearing illegible signatures, reflecting treatment of her elbow condition. Notes dated July 14, 2006 contained a diagnosis of bilateral tennis elbow. Notes dated July 19, 2006 noted tenderness in both elbows and wrists on palpation. Notes dated July 21, 2006 reflected slight swelling in the left elbow.

In a letter dated August 3, 2006, the Office informed appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to the cause of her diagnosed condition.

Appellant submitted a report dated July 3, 2006 from Dr. Charles E. Willis, a treating physician, who diagnosed bilateral epicondylitis and myofascial pain. Dr. Willis stated that, on June 28, 2006, appellant began experiencing pain in her elbows while at work on a letter tray line, sorting mail. On July 31, 2006 he noted that appellant's condition was unchanged.

Appellant submitted physicians' notes, bearing illegible signatures, for the period July 26 through September 16, 2006. An August 10, 2006 report of x-rays of the right and left elbows reflected no evidence of acute fracture, dislocation or articular disease. Appellant submitted follow-up notes dated August 15 through 25, 2006 from Dr. Weddle. On August 15, 2006 his range of motion examination of bilateral elbows revealed flexion of 150 degrees on the left and 130 degrees on the right.

Appellant submitted a report from Dr. Willis dated August 28, 2006, noting that her condition had improved since the previous visit and that bilateral elbow tenderness had decreased. His assessment included, "Good pain control with current regimen."

By decision dated October 2, 2006, the Office denied appellant's claim on the grounds that she had not established a causal relationship between the diagnosed condition and accepted work-related events. The Office noted that appellant had not provided a narrative medical report explaining the cause of her condition.

In an undated form, received by the Office on November 27, 2006, appellant requested reconsideration of the Office's October 2, 2006 decision. She submitted physicians' notes, bearing an illegible signature, dated September 13 and October 13, 2006. In a September 25, 2006 follow-up report, Dr. Willis stated that appellant's condition remained unchanged, and found that her pain was well controlled with the current regimen. Appellant also submitted documents previously received and considered by the Office.[1]

By decision dated December 1, 2006, the Office denied appellant's request for merit review, on the grounds that she failed to raise a substantive legal question or present relevant evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.[5]

[1] The Board notes that the record on appeal contains evidence which was not before the Office at the time it issued its December 1, 2006 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). *See also Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, i.e., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.[6]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[7]

ANALYSIS -- ISSUE 1

The medical evidence submitted by appellant is insufficient to establish that her diagnosed medical condition was caused or aggravated by factors of her federal employment. Therefore, she has failed to meet her burden of proof.

Appellant submitted reports dated July 7 and 17, 2006, and follow-up notes, from Dr. Weddle, a chiropractor, who treated appellant for bilateral elbow pain. Dr. Weddle related appellant's complaints of pain, described her job duties and provided examination findings. The Board notes that the term "physician" as defined under the Act includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[8] As there is no indication that Dr. Weddle treated appellant for subluxation of the spine, he cannot be considered a physician. Therefore, his reports do not constitute probative medical evidence.

Appellant submitted reports from Dr. Willis dated July 3 to September 25, 2006. On July 3, 2006 Dr. Willis diagnosed bilateral epicondylitis and myofascial pain. Although he indicated that appellant began experiencing pain while at work on June 28, 2006, he expressed no opinion as to the cause of appellant's condition. Therefore, this report is of limited probative value. None of Dr. Willis' other reports contain any opinion as to the cause of appellant's elbow condition, they do not constitute probative medical evidence.

[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4, at 218.

[8] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician under section 8101(2) of the Act, which provides: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

The remaining medical evidence of record does not support appellant's claim for disability. Appellant submitted physicians' progress notes bearing illegible signatures. These reports, lacking proper identification, cannot be considered as probative evidence.[9] Reports of MRI scans and x-rays, which do not contain an opinion on causal relationship, are of no probative value.

Appellant expressed her belief that her alleged condition resulted from her duties as a mail handler. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work-related conditions is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[12] the Office 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.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] 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.[15] The Board has held that the submission of

[9] *Merton J. Sills, supra* note 8.

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

[12] 5 U.S.C. §§ 8101-8193. 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).

[13] 20 C.F.R. § 10.606(b)(2).

[14] 20 C.F.R. § 10.607(a).

[15] 20 C.F.R. § 10.608(b).

evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[16]

ANALYSIS -- ISSUE 2

Appellant's 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).

In support of her request for reconsideration, appellant submitted a September 25, 2006 follow-up report from Dr. Willis, illegible physicians' notes, bearing illegible signatures and copies of previously-provided documents. Dr. Willis' report did not address the relevant issue, namely, whether appellant's condition was causally related to her employment.[17] Rather, the report merely reiterated information contained in documents previously received and reviewed by the Office and was, therefore, cumulative and duplicative in nature.[18] The Board finds that Dr. Willis' report does not constitute relevant and pertinent new evidence not previously considered by the Office.[19] The copies of previously-submitted documents are, by definition, duplicative and of no evidentiary value. Appellant also submitted largely illegible physicians' progress notes, bearing illegible signatures. As these reports are illegible, there is no evidence that they contain information relevant to the issue of causal relationship. Additionally, as they lack proper identification, they cannot be considered as probative evidence.[20] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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[16] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[17] *Id.*

[18] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

[19] *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).

[20] *Merton J. Sills, supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the December 1 and October 2, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 14, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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