U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDIE HAWKINS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

Docket No. 96-539; Submitted on the Record;
Issued August 12, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for continuing compensation due to right arm strain for consideration of the merits; and (2) whether appellant has met her burden of proof in establishing that she developed bilateral carpal tunnel syndrome due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for right shoulder strain for consideration of the merits.

Appellant filed a claim on August 16, 1990 alleging that she strained her right arm in the performance of duty. The Office accepted appellant's claim for right arm muscle strain on October 5, 1990. By decision dated June 8, 1993, the Office terminated appellant's compensation benefits effective June 27, 1993. Appellant requested an oral hearing and by decision dated October 31, 1993, the Branch of Hearings and Review denied her request as untimely. Appellant filed with the Board a "Request for Reconsideration" of the Office's decisions and the appeal was docket as No. 94-166. At appellant's request, the Board dismissed the appeal by Order dated August 4, 1995 to allow appellant to request reconsideration from the Office.[1] The Office reviewed appellant's September 11, 1993 reconsideration request on September 5, 1995 and found the evidence submitted was not sufficient to require review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the

[1] Docket No. 94-166.

Office.[2] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.[3]

Appellant submitted several medical reports previously considered by the Office in reaching final decisions. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[4]

Appellant also submitted a detailed statement discussing the history of her claim. Appellant reviewed the medical evidence of record and suggested that Dr. Alan Werblin, a Board-certified family practitioner, should be considered carefully. These statements do not constitute new legal argument showing that the Office erroneously applied or interpreted a point of law nor do the statements advance a point of law or a fact not previously considered by the Office. As appellant has failed to submit evidence or argument complying with the Office's regulations, the Office did not abuse its discretion by refusing to reopen appellant's claim for right arm strain for review of the merits.

The Board further finds, the case is not in posture for decision due to an unresolved conflict of medical opinion evidence.

Appellant filed a claim on June 15, 1993 alleging that she developed carpal tunnel syndrome due to factors of her federal employment. By decision dated January 25, 1994, the Office denied appellant's claim finding that she failed to establish fact of injury. Appellant requested an oral hearing and by decision dated December 27, 1994 and finalized December 29, 1994, an Office hearing representative found that appellant had not submitted rationalized medical opinion evidence establishing a causal relationship between her diagnosed carpal tunnel syndrome and factors of her federal employment.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

[2] 20 C.F.R. § 10.138(b)(1).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[5]

Dr. William A.J. Ross, a neurologist completed a report on April 1, 1993 and noted appellant's complaints of bilateral wrist and hand pain and numbness with tingling. He noted appellant began keying for 45 minutes at a time on the letter sorting machine (LSM) in 1989. Dr. Ross stated that appellant began coding for four hours a day in April 1990. He noted her August 16, 1990 employment injury and noted her complaints of pain in January 1991. Dr. Ross provided his physical findings including positive Phalen's test bilaterally and positive Tinel's sign more on the left than the right. He diagnosed bilateral carpal tunnel syndrome, left more pronounced than the right. Dr. Ross stated, "It is medically reasonable that the work activity of operating the LSM since 1989, which consists of coding mail with both hands and utilizing all of the fingers on the keys, is a contributing cause of her bilateral carpal tunnel syndrome, and that her injury is therefore industrial."

The Office referred appellant, the medical records and a statement of accepted facts to Dr. Charles V. DiRaimondo, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated December 17, 1993, Dr. DiRaimondo noted appellant's history of injury and performed a physical examination finding equivocal Phalen's and Tinel's signs bilaterally. He reviewed appellant's medical history and found insufficient industrial causation for development of carpal tunnel syndrome. Dr. DiRaimondo attributed appellant's current symptoms to fibromyalgia pain syndrome. He noted that from April 1990 appellant had minimal use of the LSM, light-duty work and work absence from February 1991 to November 24, 1993 and concluded that these activities provided insufficient carpal tunnel syndrome causation. Dr. DiRaimondo stated, "This time period does not support sufficient repetitive wrist, finger or gripping activities to build a case for the development of carpal tunnel syndrome based on the concept of cumulative trauma." He further noted that the most recent nerve conduction study did not clearly verify the presence of carpal tunnel syndrome and that multiple inconsistencies were apparent on physical examination.

The Board finds that there is an unresolved conflict of medical opinion evidence between appellant's physician, Dr. Ross who reviewed appellant's history of injury, performed a physical examination finding clear signs of carpal tunnel syndrome, and concluded that appellant's work history was sufficient to produce this condition; and Dr. DiRaimondo, the Office referral physician, who found questionable signs of carpal tunnel syndrome on physical examination and concluded that appellant's recent work history was not sufficient to produce that condition. Section 8123(a) of the Federal Employees' Compensation Act,[6] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." On remand the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician for a determination of

[5] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[6] 5 U.S.C. §§ 8101-8193, 8123(a).

whether appellant has developed carpal tunnel syndrome and whether this condition is causally related to factors of her federal employment.[7]

The decision of the Office of Workers' Compensation Programs dated September 5, 1995 is hereby affirmed. The decision of the Office dated December 29, 1994 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
August 12, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] Due to the disposition of this issue, it is not necessary for the Board to consider whether the Office abused its discretion in refusing to reopen appellant's claim for consideration of the merits on July 12, 1995.