

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL ANN JONES and U.S. POSTAL SERVICE,
AIR MAIL FACILITY, Philadelphia, PA

*Docket No. 00-391; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in the present appeal and finds that the Office acted within its discretion in denying appellant's request for review of the merits of her claim.

The Office accepted appellant's claim for strains of the right arm, knee and ankle, the cervical spine and "left side" strain and later for carpal tunnel syndrome of the right wrist resulting from the April 18, 1991 employment injury. Appellant accepted a modified clerk job on May 12, 1995, filed a claim for a recurrence of disability commencing February 14, 1997 and underwent right carpal tunnel release surgery on July 3, 1997. She filed a claim for another recurrence of disability commencing June 17, 1997 and compensation benefits were resumed as of July 19, 1997.

On October 24, 1997 appellant's treating physician, Dr. Guy M. Nardella, a Board-certified plastic surgeon with a specialty in hand surgery, released appellant to her modified clerk position with permanent restrictions. Appellant continued to seek disability benefits after October 24, 1997. On October 16, 1997 appellant underwent a left carpal tunnel release which was not authorized by the Office.

In a January 22, 1998 decision, the Office terminated benefits, stating that the medical evidence of record established that the effects of the April 18, 1991 employment injury had ceased and that the left carpal tunnel release was not work related. On January 25, 1998 appellant requested written review of the record by an Office hearing representative. By decision dated June 21, 1998, the Office hearing representative affirmed the Office's January 25, 1998 decision.

By letter dated October 31, 1998, appellant requested reconsideration of the Office's decision and submitted various administrative and medical documents which had been previously submitted, pictures of mail containers, copies of Board cases and a chapter on successive disabilities from Matthew Bender & Co., Inc.

By decision dated January 29, 1999, the Office denied appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on October 1, 1999, the only decision before the Board is the January 29, 1999 decision denying reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that the application for reconsideration, including all supporting documents, 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.³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁴ If reconsideration is granted, the case is reopened and reviewed on the merits.⁵

The evidence appellant submitted to support her reconsideration request consisted of a February 18, 1997 report from Dr. Steven D. Grossinger, an osteopath, diagnosing bilateral carpal tunnel syndrome; nerve conduction studies dated February 18, 1997; an April 19, 1991 report of her original employment injury; letters from the Office dated May 23 and September 9, 1991 regarding acceptance of appellant's claim; a copy of her claim for a recurrence of disability commencing February 14, 1997; progress notes dated March 7 and March 21, 1997 diagnosing severe bilateral carpal tunnel syndrome; and March 14, 1997 progress notes from Dr. Nardella diagnosing bilateral carpal tunnel syndrome and planning surgery for both wrists. All of these documents were previously submitted or were duplicative of previously submitted evidence.

Further, the letters from the Office dated April 3 and June 10, 1997, the Office's January 22, 1998 decision, appellant's January 25, 1998 request for written review of the record, the Office hearing representative's June 21, 1998 decision, a 1992 functional capacity assessment, an attending physician's report dated August 1, 1983 from Dr. Lovell B. Harris, an internist, diagnosing traumatic injury to the left arm and frozen shoulder syndrome, 1984 letters

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8101; § 8128(a).

³ Section 10.606(b)(2)(i-iii).

⁴ Section 10.608(a).

⁵ *Id.*

from the Office pertaining to continuation of pay, bills for appellant's left carpal tunnel surgery on October 16, 1997 and pictures of mail containers which allegedly caused injury to her left arm and heel were either previously submitted, duplicate previously submitted evidence or are not relevant to the issue of appellant's disability from her left carpal tunnel syndrome due to the April 18, 1991 employment injury. The evidence appellant submitted, consisting of Board cases and the legal chapter from Matthew Bender Co., Inc., on successive injuries, is not specific to appellant, does not specifically address how appellant's left carpal tunnel syndrome is work related and is, therefore, not relevant.

As appellant has not shown that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, or submitted relevant and pertinent new evidence not previously considered by the Office, she has failed to establish a basis for merit review.

The January 29, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 21, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member