

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

SANDRA C. RIVERA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bridgeport, CT, Employer**

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**Docket No. 04-1798
Issued: August 4, 2005**

Appearances:

Michael Dennehy, for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

DAVID S. GERSON, Judge

JURISDICTION

On July 12, 2004 appellant, through her representative, filed a timely appeal from a merit decision dated March 1, 2004 from the Office of Workers' Compensation Programs denying her occupational disease claim and a nonmerit decision dated April 6, 2004 denying her request for reconsideration under 5 U.S.C. § 8128. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the April 6, 2004 decision.

ISSUES

The issues are: (1) whether appellant has established that she sustained carpal tunnel syndrome causally related to factors of her federal employment; and (2) whether the Office properly denied appellant's request for review of the merits of her claim under section 8128(a).

FACTUAL HISTORY

On November 21, 2003 appellant, then a 51-year-old window clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to factors of her federal

employment. In a statement accompanying her claim, appellant described the employment duties to which she attributed her wrist problems.

By letter dated December 23, 2003, the Office requested additional factual and medical information from appellant regarding her claim. The record indicates that the December 23, 2003 letter was properly addressed to appellant.

Appellant did not respond to the Office's request for additional information. In a decision dated March 1, 2004, the Office denied her claim on the grounds that the medical evidence was insufficient to establish a medical condition due to the claimed employment factors. The Office determined that appellant had established that "the claimed event(s) occurred."

On March 20, 2004 appellant requested reconsideration of her claim. In a statement accompanying her reconsideration request, she indicated that she did not receive the Office's December 23, 2003 letter. Appellant related that she received no correspondence from the Office regarding her claim until the March 1, 2004 decision.

In a decision dated April 6, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review of her claim under section 8128.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 and every compensation claim regardless of whether the claim is predicated on a traumatic injury or 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

¹ 5 U.S.C. §§ 8101-8193.

² *Trina Bornejko*, 53 ECAB 400 (2002); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ See *Irene St. John*, 50 EAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

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

⁵ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003); *Roger Williams*, 52 ECAB 468 (2001).

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

ANALYSIS -- ISSUE 1

The Board finds that appellant did not submit sufficient evidence to establish that she sustained carpal tunnel syndrome due to factors of her federal employment. Although she submitted a factual statement identifying the employment factors which she alleged caused or contributed to her condition, she did not submit any medical evidence in support of her claim. In order to establish her claim for an employment-related condition, appellant must submit rationalized medical evidence explaining how her carpal tunnel syndrome was caused or aggravated by the implicated employment factors.⁷

The Office notified appellant on December 23, 2003 of the evidence needed to support her claim, including a physician's report explaining how any diagnosed condition was caused by employment factors. As appellant failed to submit such evidence, she has not met her burden of proof in establishing her claim. Accordingly, the Board finds that appellant has failed to establish a *prima facie* claim for compensation.⁸

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁹ the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.¹⁰ 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.¹¹ 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.¹²

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹³ The Board has held

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

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *See Richard A. Weiss*, 47 ECAB 182 (1995).

⁹ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ 20 C.F.R. § 10.607(a).

¹² 20 C.F.R. § 10.608(b).

¹³ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁵

ANALYSIS -- ISSUE 2

The Office denied appellant's occupational disease claim because she did not submit medical evidence establishing that she sustained carpal tunnel syndrome due to factors of her federal employment. The relevant issue in this case is, therefore, medical in nature and can only be resolved through the submission of relevant medical evidence.¹⁶ Appellant, however, did not submit any medical evidence with her request for reconsideration. Instead, appellant alleged that she did not receive the Office's December 23, 2003 letter informing her of the type of information necessary to establish her claim. The record indicates that the Office mailed the December 23, 2003 letter to appellant's address of record.¹⁷ It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.¹⁸ The presumption, commonly referred to as the mailbox rule, arises when it appears from the record that the notice was properly addressed and duly mailed.¹⁹ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office, will raise the presumption that the original was received by the addressee.²⁰ Appellant submitted no evidence which would rebut this presumption, and thus failed to raise an argument of sufficient validity to warrant a merit review of her claim.

Appellant did not submit relevant evidence not previously considered with her request for reconsideration. She further failed to raise a substantive legal question or show that the Office erroneously applied or interpreted a specific point of law. Thus, the Office properly refused to reopen her claim for further review of the merits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained carpal tunnel syndrome causally related to factors of her federal employment. The Board further finds that the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to section 8128(a).

¹⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁵ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹⁶ *Ronald M. Cokes*, 46 ECAB 967 (1995).

¹⁷ The Office mailed the letter to 31 Meloy Road Unit 1E, West Haven, CT 06516.

¹⁸ *Clara T. Norga*, 46 ECAB 473 (1995).

¹⁹ *Id.*

²⁰ *See Larry L. Hill*, 42 ECAB 596 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6 and March 1, 2004 are affirmed.

Issued: August 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board