United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 07-217**
	)	**Issued: March 27, 2007**
U.S. POSTAL SERVICE, POST OFFICE, San Jose, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated March 8 and July 17, 2006 denying his occupational disease claim and a nonmerit decision dated August 10, 2006 denying his request for reconsideration. 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 August 10, 2006 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that he sustained a right wrist condition causally related to factors of his federal employment; and (2) whether the Office properly denied his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

On December 21, 2005 appellant, then a 59-year-old clerk, filed an occupational disease claim alleging that he sustained pain in his right wrist due to factors of his federal employment.

He attributed his condition to holding mail with his right wrist while sweeping mail from a delivery bar code sorter (DBCS). Appellant did not stop work. In a statement accompanying his claim, he indicated that he had not experienced trauma to his wrist but instead believed that his pain was due to "constant sweeping." Appellant submitted a certificate to return to work dated December 20, 2005 from a physician who found that he should not perform work with his right wrist for 10 days.[1]

By letter dated January 4, 2006, the Office provided appellant 30 days to submit a detailed medical report from his attending physician containing an opinion on the causal relationship between any diagnosed condition and factors of his federal employment. Appellant did not respond within the time allotted. By decision dated March 8, 2006, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained an injury due to the established work factors.

On April 6, 2006 appellant requested a review of the written record. He submitted a report dated April 6, 2006 from Dr. Samuel Cipoletti, a Board-certified internist, who stated:

> "I saw [appellant] on December 30, 2005 with a complaint of right wrist pain. Appellant felt this may be from work. He noted it becomes worse at work and he does much repetitive work with his hands and wrists.
>
> "I believe this is a work[-]related injury."

By decision dated July 17, 2006, an Office hearing representative affirmed the March 8, 2006 decision as modified to show that the claim was denied because the medical evidence was insufficient to establish causal relationship.

On August 3, 2006 appellant requested reconsideration. He contended that he should not be "penalized" because the report of his physician was inadequate. Appellant requested that the Office refer him for a second opinion examination. In a decision dated August 10, 2006, the Office denied his request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the July 17, 2006 merit decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] These are the essential

[1] The signature of the physician is not legible.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[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;[5] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[6] 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.[7]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which 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.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty[10] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

ANALYSIS -- ISSUE 1

Appellant attributed his right wrist condition to working on a DBCS machine. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a December 20, 2005 certificate to return to work, a physician opined that appellant should not perform work with his right wrist for 10 days. The signature of the physician, however, is not legible. The Board has held that medical reports lacking proper identification cannot be considered as probative evidence in support of a claim.[12]

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[4] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004).

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

[7] *Beverly A. Spencer*, 55 ECAB 501 (2004).

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

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

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

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

[12] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

On April 6, 2006 Dr. Cipoletti described his evaluation of appellant on December 20, 2005 for right wrist pain. Appellant related that his condition worsened when he was at work and performing repetitive tasks. Dr. Cipoletti asserted that the injury was employment related. He did not, however, render a definite diagnosis, list findings on examination or provide any rationale for his conclusion that appellant's condition arose from his employment. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[13]

An award of compensation may not be based on surmise, conjectures, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[14] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration, as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[15] Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[16] 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) constitute relevant and pertinent new evidence not previously considered by the Office.[17] 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.[18] 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.[19]

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.[20] The Board also has held that the submission of evidence which does not address the particular issue involved does

[13] *See Beverly A. Spencer, supra* note 7.

[14] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[15] *Robert Broome*, 55 ECAB 339 (2004).

[16] 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."

[17] 20 C.F.R. § 10.606(b)(2).

[18] 20 C.F.R. § 10.607(a).

[19] 20 C.F.R. § 10.608(b).

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

not constitute a basis for reopening a case.[21] 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.[22]

ANALYSIS -- ISSUE 2

Appellant argued that the Office erred in failing to refer him for a second opinion examination. He asserted that it was unfair to deny his claim because his physician did not submit an adequate report. It is, however, appellant's burden to submit medical evidence establishing the existence of the claimed condition and that the condition is causally related to the identified employment factors.[23] While the Office may require an employee to undergo a physical examination, as it deems necessary, the determination of the need for the examination is a matter within the province and discretion of the Office.[24] Thus, appellant's argument does not have a reasonable color of validity such that it would warrant reopening his case for merit review.[25]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.[26]

CONCLUSION

The Board finds that appellant has not established that he sustained a right wrist condition causally related to factors of his federal employment. The Board further finds that the Office properly denied his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

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

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

[23] *See Michael R. Shaffer*, *supra* note 5.

[24] *See* 5 U.S.C. § 8123; *Dana D. Hudson*, 57 ECAB ___ (Docket No. 05-300, issued January 9, 2006).

[25] *Elaine M. Borghini*, 57 ECAB ___ (Docket No. 05-1102, issued May 3, 2006).

[26] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 10, July 17 and March 8, 2006 are affirmed.

Issued: March 27, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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