

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

_____)
T.D., Appellant)

and)

U.S. POSTAL SERVICE, CENTRAL)
MASSACHUSETTS PROCESSING &)
DISTRIBUTION CENTER, Shrewsbury, MA,)
Employer)

_____)

**Docket No. 07-853
Issued: October 22, 2007**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument September 20, 2007

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 7, 2007 appellant filed a timely appeal of a May 24, 2006 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury in the performance of duty on March 21, 2006 and a September 5, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this appeal.

ISSUES

The issues are: (1) whether appellant has established that she sustained a right wrist injury in the performance of duty on March 21, 2006; and (2) whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 23, 2006 appellant, then a 58-year-old clerk, filed a traumatic injury claim alleging that on March 21, 2006 she reinjured her right wrist as a result of performing her work duties while handling manual flats.¹ She stated that the flats were too heavy to be considered limited-duty work.

The March 28 and April 4, 2006 reports of Dr. F. Joseph Celona, an attending Board-certified internist, found that appellant sustained a ganglion cyst of the volar right wrist and possible tendinitis and a triangular fibrocartilage complex (TFCC) tear. Dr. Celona set forth her physical restrictions. On April 4, 2006 he indicated with an affirmative mark that appellant's ganglion cyst was caused or aggravated by the March 21, 2006 incident.

In e-mail correspondence dated March 27, 2006, the employing establishment stated that appellant was returned to full-duty work on March 2, 2006 because her prior left shoulder injury had resolved. It noted the restrictions related to her right wrist injury. On March 9, 2006 she was assigned to the manual flats area. The employing establishment explained that appellant did not have to handle the tubs that contained the manual flats. Appellant refused to work in manual flats and requested work in the manual letter operation. She stated that she had varicose vein problems with her legs. Appellant was advised that, since these were new problems, she would be sent home and that she could not return to work until she properly requested a light-duty assignment for her additional restrictions. The employing establishment subsequently rejected a request from appellant's attending physician for a high back chair for her varicose vein condition. On March 15, 2006 appellant was assigned to a limited-duty position in the manual flat area after submitting restrictions from her attending physician. After working 30 minutes on March 16, 2004, she complained that her wrists were sore and that she could not use either hand. Appellant stated that she could not work within the restrictions established by her physician. She denied carrying a flat tub with manuals stacked at least 8 to 10 inches above the tub on two previous occasions. Appellant was sent home and returned to work on March 26, 2006. She refused to pitch manual flats as instructed by the employing establishment and she was sent home until advised to return to work.

By letter dated April 20, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she provide a detailed narrative medical report from her attending physician which included a history of injury, a firm diagnosis of any conditions resulting from the alleged injury, the extent of her disability and an explanation of "how the condition diagnosed is believed to have been caused or aggravated by your claimed injury, citing the specific job tasks that caused the injury." The Office advised appellant that this evidence was crucial in consideration of her claim.

In an April 5, 2006 letter, appellant addressed being sent home by the employing establishment on March 27, 2006. She was not permitted to return to work until she submitted medical documentation regarding her left shoulder and right wrist conditions. Appellant

¹ Appellant originally sustained a right wrist injury on March 18, 2003 while lifting a flat box at work. She was later assigned limited-duty work in manual letters. On November 28, 2005 appellant alleged that she sustained a left shoulder injury as a result of working in manual flats. She reinjured her shoulder on March 3, 2006.

addressed her request to use leave to cover her absence from work during this period, the filing of her traumatic injury claim and her refusal to work in the manual flats area due to her work restrictions.

In an April 6, 2006 report, Dr. Celona reiterated his prior diagnosis of a ganglion cyst of the right wrist. He recommended an orthopedic consultation and a magnetic resonance imaging (MRI) scan to define the soft tissue anatomy and rule out the possibility of having surgical pathology in addition to the ganglion cyst. On April 13, 2006 Dr. John R. Knorr, a neuroradiologist, performed an MRI scan of appellant's right wrist. He found some minimal degenerative changes without a focal tear. Dr. Knorr noted that the medial nerve demonstrated a light signal change through the region of the carpal tunnel which could sometimes indicate focal neuritis.

On April 13, 2006 the employing establishment offered appellant a modified clerk position sorting flat mail in the manual flat area. She responded that all of her injuries were caused by working in manual flats.

By decision dated May 24, 2006, the Office found that appellant did not sustain an injury in the performance of duty. The medical evidence of record failed to establish that the claimed right wrist injury was caused by the accepted March 21, 2006 employment incident.

On May 25, 2006 the Office received a May 15, 2006 report of Dr. Donald H. Hangen, a Board-certified orthopedic surgeon, who found that appellant sustained left shoulder tendinitis. A May 19, 2006 report of Jon M. Dooley, appellant's physical therapist, addressed her left shoulder problems.

In a May 25, 2006 letter, appellant contended that her left shoulder and right wrist conditions were caused by being forced to work in the manual flats area.

Appellant submitted Dr. Celona's February 13 and May 3, 6 and 24, 2006 form reports, which reiterated his diagnoses of tendinitis and a ganglion cyst of the right wrist. Dr. Celona noted that these conditions were caused or aggravated by the March 21, 2006 employment incident with an affirmative mark.

In a May 18, 2006 report, Dr. Anthony R. Caprio, a Board-certified orthopedic surgeon, stated that appellant performed repetitive work as a machine operator at the employing establishment. He provided a history of her right wrist and left shoulder problems. Dr. Caprio noted appellant's complaint of right shoulder symptoms. On physical examination, he reported essentially normal findings with regard to her left shoulder with the exception of slight weakness of the left rotator cuff, anterior impingement of the left shoulder and tenderness over the bicipital groove with plus minus Yergason and Speed sign. Dr. Caprio also reported essentially normal findings regarding appellant's right wrist. He stated that perhaps she had a ganglion cyst over the radial volar aspect of the wrist. Dr. Caprio diagnosed left overuse syndrome with chronic recurrent anterior impingement syndrome that was exacerbated by appellant's job. He also diagnosed right wrist overuse syndrome, noting that she had a preexisting problem with the right wrist dating back to March 2003 and had since been assigned modified work for this problem. Dr. Caprio opined that it seemed that appellant's job resulted in overuse syndrome of the right

wrist and left shoulder. He stated that most of her complaints were subjective with very few hard objective findings, but opined that she definitely had chronic anterior impingement of the left shoulder and both seemed to be aggravated and exacerbated over the years. Dr. Caprio related that appellant's preexisting conditions included perhaps degenerative osteoarthritis of the left acromioclavicular (AC) joint. He concluded that she had reached maximum medical improvement and that she was partially disabled regarding the left shoulder, but he could not find any evidence of an acute injury regarding her right wrist. Dr. Caprio stated that appellant could work full time in her modified position with restrictions.

In reports dated January 17 and February 28, 2006, Dr. Celona found that appellant sustained left shoulder impingement and left rotator tendinopathy on November 28, 2005. His February 13 and May 3, 2006 form reports reiterated his diagnosis of ganglion cyst of the right wrist. Dr. Celona indicated with an affirmative mark that this condition was caused or aggravated by the March 18, 2003 employment incident.

By letter dated June 8, 2006, appellant requested reconsideration of the Office's May 24, 2006 decision. She explained the delay in responding to the Office's April 20, 2006 developmental letter. Appellant stated that she was away attending a U.S. Air Force reserve school from April 16 through 29, 2006 when the Office's April 20, 2006 letter was mailed to her. She submitted requests for sick leave on April 30 and May 1, 2006. A June 8, 2006 letter from Major Sergeant Robert J. Andreoli, of the Department of the Air Force stated that appellant attended military school from April 16 to 29, 2006 and that she continued to be in military status for training until April 30, 2006. Appellant submitted reports from Dr. Celona dated February 13 to July 18, 2006. She also submitted a May 17, 2006 medical bill.

A March 20, 2006 disability certificate from a physician whose signature is illegible found that appellant was unable to lift with her left hand from November 29, 2005 to the date of the certificate until further notice, pending an appointment with a surgeon. A May 2, 2006 x-ray report found no bony abnormality of appellant's right wrist.

In a December 13, 2005 form report, Dr. Celona reiterated that appellant sustained left shoulder impingement and left rotator cuff tendinopathy and that these conditions were caused or aggravated by a November 28, 2005 employment incident with an affirmative mark.

In a March 13, 2006 letter, appellant stated that the employing establishment's refusal to allow her to use a high back chair in the manual flats area, which involved prolonged standing while performing her work duties, aggravated her varicose vein condition in both legs.

On June 9, 2006 Dr. Celona reviewed Dr. Caprio's May 18, 2003 report. He stated that his May 24, 2006 report spoke for itself and that he had no comment on Dr. Caprio's examination.

By letter dated July 10, 2006, appellant submitted the June 20, 2005 and March 9, 2006 requests for a high back chair from Dr. Seema R. Naravane, a Board-certified internist, who stated that the chair would help reduce the likelihood of an aggravation of her varicose vein problem that was brought on by prolonged standing. Dr. Naravane further stated that the chair would provide her with the extra height she needed in a letter case to pitch to the top of the case

and reduce the stress in using both wrists. In reports dated March 10 and 13, 2006, he found that appellant had bilateral varicose veins. Dr. Naravane restricted her from prolonged standing for more than 1 hour and recommended a 15-minute sitting rest between prolonged standing intervals.

In a July 24, 2006 letter, appellant again requested reconsideration of the Office's May 24, 2006 decision. She submitted Dr. Celona's July 17 and 18, 2006 reports which reiterated his diagnoses of a ganglion cyst and tendinitis.

By decision dated September 5, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant a merit review of the Office's prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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 elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS -- ISSUE 1

The record supports that on March 21, 2006 appellant hurt her right wrist while handling manual flats at work. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused or contributed to her right wrist condition.

Dr. Celona's March 28 and April 4 and 6, 2006 reports found that appellant sustained a ganglion cyst of the right wrist and possible tendinitis and TFCC tear. This evidence, however, failed to address whether the March 21, 2006 employment incident caused or contributed to appellant's ganglion cyst. Further, Dr. Celona failed to provide a definitive diagnosis with regard to the other diagnosed conditions and address the causal relationship between these conditions and the accepted employment incident.

In an April 4, 2006 form report, Dr. Celona indicated that appellant's ganglion cyst was caused or aggravated by the accepted employment incident with an affirmative mark. His report is insufficient to establish appellant's claim as a report which only addresses causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury, is insufficient to establish causal relationship and is of diminished probative value.¹⁰

Appellant did not submit sufficient medical evidence to establish the causal relationship between her right wrist condition and the accepted March 21, 2006 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a right wrist injury in the performance of duty on March 21, 2006. Therefore, appellant failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹¹ the Office's regulation provides 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.¹² To be entitled to a merit review of an Office decision

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁰ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹¹ 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).

¹² 20 C.F.R. § 10.606(b)(1)-(2).

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.¹³ 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 of the merits.

ANALYSIS -- ISSUE 2

By letters dated June 8 and July 24, 2006, appellant disagreed with the Office's decision finding that she did not sustain a right wrist injury while in the performance of duty because the medical evidence of record did not establish that the claimed injury was causally related to the March 21, 2006 employment incident. The relevant issue in this case is whether appellant's right wrist injury was causally related to the accepted March 21, 2006 employment incident. The Board notes that this issue is medical in nature.

Dr. Hangen's May 15, 2006 report found that appellant had left shoulder tendinitis. Dr. Celona's December 13, 2005 and January 17 and February 28, 2006 reports found that appellant sustained left shoulder impingement and left rotator tendonopathy on November 28, 2005. The March 20, 2006 disability certificate found that she was unable to lift with her left hand from November 29, 2005 to the date of the certificate until further notice pending an appointment with a surgeon. Dr. Naravane's June 20, 2005 and March 9, 2006 letters and March 10 and 13, 2006 reports found that appellant had bilateral varicose veins. He provided her work restrictions and requested a high back chair due to her condition. This evidence, however, is not relevant to the claimed injury adjudicated by the Office in the present appeal. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ As the issue in this case involves a right wrist injury sustained by appellant on March 21, 2006, the reports and letters of Dr. Hangen, Dr. Celona and Dr. Naravane and the disability certificate are not relevant and thus, insufficient to warrant reopening appellant's claim for further merit review.

Similarly, the May 17, 2006 medical bill, Dr. Celona's April 27, 2006 referral for a MRI scan of appellant's right wrist, his June 9, 2006 letter which stated that he had no comment on Dr. Caprio's May 18, 2003 report and the May 2, 2006 x-ray report which found no bony abnormality of appellant's right wrist are not relevant. This evidence does not state that appellant sustained a right wrist condition causally related to the March 21, 2006 employment incident. Thus, the medical bill, Dr. Celona's referral and the x-ray report are insufficient to warrant reopening appellant's claim for further merit review.

Dr. Celona's reports dated February 13 to July 18, 2006 reports reiterated his prior diagnoses of tendinitis and a ganglion cyst of the right wrist, his opinion that these conditions were caused or aggravated by the accepted March 21, 2006 employment incident and appellant's work restrictions. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.¹⁵ The

¹³ *Id.* at § 10.607(a).

¹⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁵ *See Patricia G. Aiken*, 57 ECAB ____ (Docket No. 06-75, issued February 17, 2006).

Board finds that Dr. Celona's reports are insufficient to warrant reopening appellant's claim for further merit review.

The May 19, 2006 report from Mr. Dooley, appellant's physical therapist, does not constitute probative medical evidence inasmuch as a physical therapist is not considered a physician under the Act.¹⁶

In a May 18, 2006 report, Dr. Caprio noted that appellant performed repetitive work at the employing establishment. He diagnosed left overuse syndrome with chronic recurrent anterior impingement syndrome and right wrist overuse syndrome which he attributed to appellant's job. The Board finds that Dr. Caprio's report constitutes pertinent new and relevant medical evidence not previously considered by the Office which constitutes a basis for reopening of appellant's claim for merit review.¹⁷

Since appellant submitted evidence in support of her request for reconsideration which meets the third standard for obtaining a merit review of her case, the Board finds that the Office should have reopened the case for a review on the merits. Accordingly, the Board will remand the case to the Office for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right wrist injury in the performance of duty on March 21, 2006. The Board, however, finds that the Office improperly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁶ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

¹⁷ The requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge the burden of proof. The requirement pertaining to the submission of evidence specifies only that the evidence be relevant and pertinent and not previously considered by the Office. *Sydney W. Anderson*, 53 ECAB 347 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2006 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further action consistent with this decision. The Office's May 24, 2006 decision is affirmed.

Issued: October 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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