

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Indianapolis, IN, Employer**

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**Docket No. 08-1832
Issued: January 21, 2009**

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 May 21, 2008 appellant filed an appeal to the Board. He had originally filed an appeal on May 27, 2003 from the Office of Workers' Compensation Programs' merit decision dated November 12, 2002 and a decision denying merit review dated April 30, 2003. This appeal was docketed as No. 03-1549. As the case record associated with this appeal was incorrect, the Board's March 15, 2004 order remanding the case did not address the issues under OWCP File No. xxxxxx756. Therefore the Board will consider under the current docket the May 27, 2003 appeal. Since the appeal was filed within one year of the November 12, 2002 decision, the Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant has established an elbow condition causally related to his federal employment; and (2) whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

On December 14, 2000 appellant, a 49-year-old mail handler filed an occupational claim (Form CA-2) alleging that he sustained bilateral cubital tunnel syndrome as a result of his federal employment. The employing establishment indicated in a February 14, 2001 letter that appellant had been working light duty since April 1996 due to prior employment injuries, including carpal tunnel syndrome and cervical spondylosis. In a February 28, 2001 statement, appellant indicated that his light-duty job included repetitive activity such as lifting and placing letters in different slots.

Appellant submitted a December 5, 2000 report from Dr. James Steichen, an orthopedic surgeon, who noted that appellant had symptoms of cubital tunnel syndrome. By decision dated March 26, 2001, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient. Appellant requested a hearing before an Office hearing representative, which was held on December 18, 2001.

In a report dated March 22, 2002, Dr. Steichen noted the diagnosis of possible cubital tunnel syndrome in December 2000, but indicated he had no record the condition was work related. By report dated September 7, 2002, Dr. John Hague, a rheumatologist, stated that appellant's present symptoms were related to significant lateral epicondylitis and some medial epicondylitis. He stated that appellant's "elbow symptoms are aggravated by the shoulder and by carpal tunnel problems, both of which he has had, compounded by the nature of the work he was required to do (*i.e.*, heavy lifting and forceful pulling)."

By decision dated November 12, 2002, the Office reviewed the case on its merits and denied modification. It found the medical evidence was not sufficient to establish the claim.

Appellant requested reconsideration by letter dated March 17, 2003. He submitted a February 13, 2003 report from Dr. Hague, who noted the Office's findings regarding the inadequacy of the medical evidence. Dr. Hague stated that he had done a complete musculoskeletal examination and there were objective findings, such as muscular tenderness. He stated that appellant had medial and lateral epicondylitis and, with respect to causal relationship with work, the use of his hands in a forceful and repetitive fashion is the type of activity which led to problems with his medial and lateral epicondylitis. Dr. Hague further stated, "With respect to "an adequate discussion" with medical reasoning as to how his present condition is connected to his employment factors, the general observation would be that in someone with a shoulder problem, the use of the entire upper extremity is distorted and unusual pressures or forces are applied to the epicondylar areas and to the tendons of the distal forearm area as well as to the hands and fingers. This is a common sequence of events. Similarly, someone who has a painful elbow will alter the use of the wrists, hands and fingers and will have to use his shoulder only in certain directions in order to avoid symptoms."

By decision dated April 30, 2003, the Office denied merit review of the claim. It found the report from Dr. Hague was cumulative and not sufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.³

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁵ Additionally, in order to be considered rationalized; the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an elbow condition as a result of repetitive activity in his light-duty job. Dr. Steichen noted a possible cubital tunnel syndrome diagnosis, but he did not support causal relationship with employment. In his March 22, 2002 report, he indicated his records did not show causal relationship. Dr. Hague diagnosed lateral and medial epicondylitis, without providing a rationalized medical opinion on causal relationship. He did not provide a complete history, discuss in detail appellant's employment activities or provide a rationalized medical opinion on causal relationship with employment.

It is appellant's burden of proof to establish a diagnosed condition causally related to factors of his federal employment. He did not meet his burden of proof in this case.

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.⁷ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”⁸

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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 evidence not previously considered by the Office.⁹

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

ANALYSIS -- ISSUE 2

The Office found that Dr. Hague’s February 13, 2003 report was cumulative and therefore not sufficient to warrant reopening the claim for merit review. A review of Dr. Hague’s report, however, indicates that he provided new and relevant evidence on the issue presented. He specifically addressed some of the concerns stated in the Office’s November 12, 2002 decision, noting the completeness of his examination and the objective findings. Dr. Hague offered a clarifying statement regarding causal relationship between the diagnosed lateral and medial epicondylitis and appellant’s employment, noting repetitive work activity and explaining the contribution of a shoulder condition to such activity.

A claimant is entitled to a merit review if he submits relevant and pertinent evidence not previously considered by the Office. The February 13, 2003 report from Dr. Hague is relevant evidence that was not previously considered by the Office. It meets the requirement of 20 C.F.R. § 10.606(b)(2)(iii) and entitles appellant to a merit review of his claim.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.605 (1999).

⁹ *Id.* at § 10.606(b)(2).

¹⁰ *Id.* at § 10.608.

CONCLUSION

Appellant did not meet his burden of proof to establish an elbow condition causally related to his federal employment. On reconsideration, he submitted relevant and pertinent evidence not previously considered by the Office, and he is entitled to a merit review of his claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 12, 2002 is affirmed. The April 30, 2003 decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 21, 2009
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