

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

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| L.V., Appellant |) | |
| |) | |
| and |) | Docket No. 08-2341 |
| |) | Issued: May 22, 2009 |
| U.S. POSTAL SERVICE, CONSUMER |) | |
| AFFAIRS OFFICE, West Sacramento, CA, |) | |
| Employer |) | |
| |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 26, 2008 appellant filed a timely appeal of a July 9, 2008 decision of the Office of Workers' Compensation Programs denying her claim for compensation and a July 29, 2008 decision denying her request for reconsideration without a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an occupational injury in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration without a merit review.

FACTUAL HISTORY

On April 21, 2008 appellant, then a 44-year-old consumer affairs claims and inquiry clerk, filed an occupational disease claim alleging that she developed tendinitis, right arm and hand pain and nerve discomfort in her right hand from performing daily computer work. She

noted the onset of the condition since she had held her position in 2003. Appellant also noted a flare-up occurred in 2005. She first realized her condition was caused by her employment on May 26, 2005. Appellant did not stop work.

In an undated statement, appellant noted the onset of her condition on May 26, 2005 with intermittent flare-ups between 2006 and March 24, 2008. She also indicated that prolonged computer use, typing and mouse clicking since 2003 aggravated her right arm and hand condition. Appellant noted that she had no problems prior to 2005.

On May 7, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional information. In particular, it requested a comprehensive medical report from a treating physician with a diagnosis and opinion on the cause of her condition.

In an April 23, 2008 statement, appellant asserted that her supervisor was aware of her condition in 2005 and 2006 as she had worn a hand brace and had been approved for an ergonomic keyboard. She noted using sick leave on various occasions for her condition. In a May 13, 2008 statement, appellant noted that she had played tennis weekly but stopped as it aggravated her right arm. She stated that she used her home computer less often due to the flare-up of her condition. Appellant also experienced numbness from clapping at church. She indicated first noticing her condition in 2003 after developing numbness and pain from repetitive mouse clicking. Appellant treated her condition with physical therapy.

Appellant also submitted a Form CA-17, duty status report, dated May 7, 2008, in which appellant's physician¹ indicated that appellant injured her right shoulder and right hand from a repetitive motion injury. The form noted that she could resume regular full-time work on May 8, 2008, but needed to get up and ambulate every two hours. On April 7, 2008 Dr. David Seidenwurm, a Board-certified diagnostic radiologist, noted that a magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed possible ossification of the posterior longitudinal ligament and multilevel degenerative disease. A May 7, 2008 treatment note from Creekside Medical Group noted appellant's complaint of right arm and hand pain.² It listed an assessment of myalgia of the upper back and shoulder.

By decision dated July 9, 2008, the Office denied appellant's claim for compensation finding the medical evidence insufficient to support that appellant sustained a medical condition related to the accepted work duties of constant use of mouse and keyboard while working on a computer.

On July 18, 2008 appellant requested reconsideration. In a statement of the same day, she asserted her belief that the medical documents of record showed that she sustained an injury based on the type of work she performed. Appellant further noted that daily computer work and an inappropriate workstation caused her injury.

¹ The signature is not legible.

² There is no legible signature of a healthcare provider on this treatment note.

Appellant submitted a March 25, 2008 treatment note from a nurse practitioner who noted appellant's complaint of pain and tingling in her right arm. The nurse practitioner also noted that appellant had full range of motion in her neck and the right upper extremity neurovascular was intact. In an April 29, 2008 referral and request authorization form from Sutter Physicians, a healthcare provider referred appellant to physical therapy.³ The form also noted a diagnosis of neuropathy of the neck and right upper extremity pain. It further indicated a medical history of right shoulder and neck pain. Appellant also submitted physical therapy notes dated between May 12 and June 25, 2008. On May 12, 2008 John Enos, a physical therapist, noted that appellant had been diagnosed with neck, right shoulder and right arm pain with symptoms consistent with right shoulder strain and C7 radiculopathy in the right upper extremity. He also noted appellant's complaint of intermittent right shoulder and arm pain off and on for five years. Mr. Enos indicated that the symptoms became present in late March 2008 without known provocation. In physical therapy notes dated June 23 and 25, 2008, LeeAnn Synder-Martin, a physical therapist, noted that appellant was able to return to normal activities of daily living without flare-up.

By decision dated July 29, 2008, the Office denied appellant's reconsideration request finding that the additional evidence was cumulative and did not address whether the accepted factors of employment proximately caused the condition in question.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.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; (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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on

³ The healthcare provider's name is not legible.

⁴ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS -- ISSUE 1

The record reflects that appellant is a consumer affairs claims and inquiry clerk whose job duties included daily use of a mouse and keyboard while working on a computer. However, the medical evidence does not support that appellant's condition is causally related to her computer use or other repetitive arm activity at work.

Appellant submitted a CA-17 noting that she had injured her right shoulder and hand from repetitive motion. The form also indicated that appellant could return to work, but she needed to ambulate every two hours. However, the CA-17 form did not provide a diagnosis of appellant's condition or describe the physician's clinical findings. The Board has held that a medical report lacks probative value if it does not contain a specific diagnosis or medical opinion as to how appellant's current condition was caused or aggravated.⁷ In any event, the identity of the physician or healthcare provider signing the report cannot be determined from the record. As such, it is not clear that the report was authored by a physician.⁸ Likewise the May 7, 2008 treatment note from Creekside Medical Group did not address the cause of the diagnosed myalgia and the identity of the healthcare provider who signed the treatment note cannot be determined from the record.⁹ Therefore, this evidence is insufficient to establish appellant's claim.

The cervical MRI scan report from Dr. Seidenwurm indicated possible ossification of the posterior longitudinal ligament and multilevel degenerative disease. However, Dr. Seidenwurm did not address appellant's employment activities or discuss how such activities caused or contributed to appellant's alleged right hand and arm condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

⁶ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *See Ronald K. White*, 37 ECAB 176 (where the Board held that a claim without medical documentation of a specific diagnosis or a causal relationship is of little probative value).

⁸ *See D.D.*, 57 ECAB 734 (2006) (the Board has held that medical reports lacking proper identification cannot be considered as probative evidence in support of a claim). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

⁹ *See id.*

¹⁰ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

Appellant did not submit a report from a physician explaining how a diagnosed medical condition was caused or aggravated by particular factors of her employment. Consequently, the medical evidence is insufficient to establish that appellant's right hand and arm condition was caused by employment factors, such as daily computer usage.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by 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.¹¹ Section 10.608(b) of Office regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

Appellant supported her reconsideration request with a statement asserting that daily computer work caused her right hand and arm condition. As this argument was originally made upon filing her claim for compensation, appellant did not advance a relevant legal argument not previously considered by the Office or show that the Office erroneously applied or interpreted a specific point of law. The Board also notes that the underlying issue in this case is medical in nature; whether there is sufficient medical evidence to establish that particular work factors caused or aggravated a diagnosed medical condition.

The additional medical documents submitted by appellant, although new, do not constitute relevant and pertinent evidence not previously considered by the Office. In an April 29, 2008 referral form, an unknown healthcare provider diagnosed neuropathy of the neck and right upper extremity pain and referred appellant for physical therapy. However, this report is not relevant as it cannot be determined from the record that the report is from a physician.¹³ As noted, the underlying issue in the case is medical in nature which must be resolved by medical evidence. To the extent that the signature on the form is from a physician, the form did not address the relevant medical issue of whether appellant's daily computer use caused her right hand and arm condition. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹⁴

¹¹ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

¹² *K.H.*, 59 ECAB ____ (Docket No. 07-2265, issued April 28, 2008).

¹³ *See supra* note 8.

¹⁴ *Johnnie B. Causey*, 57 ECAB 359 (2006).

Appellant also submitted a treatment note from a nurse practitioner indicating appellant's complaint of pain and tingling in her right arm. However, registered nurses and licensed practical nurses are not "physicians" as defined under the Act. Their opinions are of no probative medical value.¹⁵ Additionally, the physical therapy notes submitted on reconsideration also do not constitute medical evidence as physical therapists are not considered physicians under the Act, and as a result, they are not competent to provide a medical opinion.¹⁶ Therefore, these medical documents are not relevant and do not constitute a basis for reopening appellant's claim.

Consequently, appellant did not submit sufficient evidence to warrant reopening her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational injury in the performance of duty. The Board also finds that the Office properly denied appellant's request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 29 and 9, 2008 are affirmed.

Issued: May 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ *Roy L. Humphrey*, *supra* note 5; see 5 U.S.C. § 8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, *supra* note 8.

¹⁶ *Barbara Williams*, 40 ECAB 649 (1989).