

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed carpal tunnel syndrome due to factors of her federal employment; and (2) whether the Office properly refused to reopen her claim for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On May 13, 2008 appellant, then a 35-year-old program support clerk, filed an occupational disease claim alleging that she developed right carpal tunnel syndrome due to her employment duties of keyboarding, taking pictures and answering the telephone. She first realized that her condition was related to her employment on April 26, 2008.

In a note dated April 30, 2008, Dr. David T. Sowa, a Board-certified orthopedic surgeon, listed a history of computer work. On examination he noted a positive Tinel's sign, Phalen's sign and compression sign as well as irritability over the right median nerve at the wrist. Dr. Sowa recommended an electromyogram (EMG). An EMG study dated May 13, 2008 revealed no evidence of carpal tunnel syndrome, cubital tunnel or radiculopathy in the right upper extremity.

In a letter dated May 30, 2008, the Office requested additional factual and medical evidence. It allowed 30 days for a response. Dr. Sowa completed a form report on June 9, 2008. He diagnosed numbness and pain in the right hand and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity.

Appellant responded to the Office's request for information on June 11, 2008. She stated that she was responsible for coordinating travel, processing invoices, photographing and issuing identification, processing claims for payment and fiscal auditing. On April 24, 2008 appellant could not open her hand and experienced pain and stiffness in her middle finger, palm and wrist. Dr. Sowa completed a note on June 2, 2008 and reported the normal EMG findings. He advised that appellant had intermittent diffuse aching in the right upper extremity and recommended physical therapy. Appellant's supervisor, Miguel A. Sanchez, completed a statement on June 19, 2008. He stated that appellant's work required keyboarding and answering the telephone, but that these activities were not constant and repetitive. In emergency room records dated April 26, 2008, it was noted that appellant could not open her right hand and right carpal tunnel syndrome was diagnosed.

By decision dated August 11, 2008, the Office denied appellant's claim. Although appellant established that she performed the implicated employment duties, she did not submitted sufficient medical evidence to establish that her right wrist condition resulted from these duties.

In a letter dated September 24, 2008, appellant requested reconsideration of the Office's August 11, 2008 decision. She submitted photographs of her workstation and physical therapy notes. By decision dated November 14, 2008, the Office declined to reopen appellant's claim for consideration of the merits as she failed to submit relevant new evidence in support of her request.

### **LEGAL PRECEDENT -- ISSUE 1**

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.<sup>1</sup> 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 a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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. The medical opinion 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 claimant.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

Appellant submitted medical evidence diagnosing right carpal tunnel syndrome. She attributed her condition to employment factors of keyboarding and working at a new workstation. The Office accepted that her work required that she perform these duties; however, the Board finds that appellant has not submitted sufficient medical evidence to establish a causal relationship between her diagnosed right carpal tunnel syndrome and her federal employment.

Appellant submitted the reports of Dr. Sowa, a Board-certified orthopedic surgeon. On April 30, 2008 Dr. Sowa provided a history of computer work and noted a positive Tinel's sign, Phalen's sign and compression sign as well as irritability over the right median nerve at the wrist. He detained additional electrodiagnostic testing, which revealed no evidence of carpal tunnel syndrome in the right upper extremity. Dr. Sowa reviewed this testing and advised that appellant had intermittent diffuse aching in the right upper extremity. He recommended physical therapy. The Board has held that the diagnosis of pain does not constitute a basis for the payment of compensation.<sup>3</sup> Dr. Sowa did not provide a firm diagnosis of appellant's right upper extremity condition in light of the negative diagnostic studies. Moreover, he indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.<sup>4</sup>

The medical evidence of record is not sufficient to establish that appellant's has carpal tunnel syndrome or other medical conditions causally related to her accepted employment duties.

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>3</sup> *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>4</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

The Board finds that appellant has not met her burden of proof in establishing her occupational disease claim. The Office properly denied her claim.

### **LEGAL PRECEDENT -- ISSUE 1**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant requested reconsideration by letter dated September 24, 2008. She disagreed with the Office's findings and submitted photographs of her workstation together with physical therapy notes.

Appellant has not submitted relevant and pertinent new evidence which would require the Office to reopen her claim for consideration of the merits. The photographs were already part of the records and are not relevant to the issue on which the Office denied her claim, the absence of medical opinion evidence establishing a causal relationship between her right wrist condition and her accepted employment duties. The physical therapy notes submitted by appellant do not require reopening his claim for further merit review. Registered nurses, licensed practical nurses, physical therapists and physician's assistants are not "physicians" as defined under the Act. Their opinions are of no probative value in establishing the medical aspect of a claim.<sup>8</sup> The evidence submitted by appellant is not relevant to the medical issue in her claim. The Board finds that the Office properly declined to reopen her claim for consideration of the merits.

### **CONCLUSION**

The Board finds that appellant did not submit sufficient medical evidence to establish a medical condition causally related to her accepted job duties. The Board further finds that appellant failed to submit the relevant and pertinent new evidence to require the Office to reopen her claim for review of the merits.

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<sup>5</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14 and August 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 2, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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