

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

E.W., Appellant	)	
	)	
and	)	Docket No. 11-1895
	)	Issued: March 16, 2012
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 12, 2011 appellant filed a timely appeal of a February 15, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying her claim as well as an April 11, 2011 nonmerit decision denying reconsideration.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction to consider the merit and nonmerit issues of the case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she developed carpal tunnel syndrome due to factors of her federal employment; and (2) whether

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<sup>1</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. See 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on February 15, 2011, the 180-day computation begins February 16, 2011. One hundred and eighty days from February 16, 2011 was August 15, 2011. Since using August 16, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 12, 2011, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On November 30, 2010 appellant, then a 59-year-old rural mail carrier, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to factors of her federal employment. She first became aware of her condition on May 8, 2003 and first attributed it to her employment on November 3, 2010. Appellant stated that holding the mail tightly in her left hand and driving caused carpal tunnel syndrome in her left wrist. She noted that she was previously diagnosed with carpal tunnel syndrome in the right wrist.

In a letter dated December 9, 2010, OWCP requested additional factual and medical evidence from appellant in support of her claim. Appellant described her employment duties. In a report dated January 17, 2011, Dr. Jon Hernandez, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome. He stated that appellant had ongoing left hand pain mostly in her thumb. Dr. Hernandez noted that Tinel's and Phalen's signs as well as carpal tunnel compression were negative and that she had normal strength in her thumb. He found that appellant had pain pinching in the left hand. Dr. Hernandez injected her left thumb with steroids.

By decision dated February 15, 2011, OWCP denied appellant's claim for left carpal tunnel syndrome. It noted that she had a prior claim which was accepted for right carpal tunnel syndrome. OWCP found that appellant had not submitted sufficient medical evidence to establish a diagnosis of left carpal tunnel syndrome and that there was no medical evidence attributing the condition to her employment.

Appellant requested reconsideration on March 7, 2011. In a note dated January 17, 2011, Dr. Hernandez prescribed appellant a thumb support wrap. Appellant stated that test results revealed that she had left carpal tunnel syndrome.

By decision dated April 11, 2011, OWCP declined to reopen appellant's claim for further consideration of the merits finding that she failed to include relevant new evidence with her request for reconsideration.<sup>3</sup>

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

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 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. The evidence required to establish causal relationship is rationalized medical opinion evidence,

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<sup>3</sup> On appeal to the Board appellant submitted new evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

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

Appellant submitted a report from Dr. Hernandez diagnosing carpal tunnel syndrome. She also attributed this condition to specific duties of her federal employment. Dr. Hernandez noted that appellant had negative diagnostic tests for carpal tunnel syndrome including carpal tunnel compression, Phalen's and Tinel's signs. Appellant did not offer any opinion that appellant's current condition was due to her employment duties.

The Board finds that the medical evidence is not sufficient to establish that appellant has developed left carpal tunnel syndrome as a result of her employment. The Board concludes that she failed to meet her burden of proof and OWCP properly denied her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>5</sup> Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>7</sup>

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. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. 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.<sup>8</sup>

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<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

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

<sup>6</sup> 20 C.F.R. § 10.606.

<sup>7</sup> *Id.* at § 10.608.

<sup>8</sup> *M.E.*, 58 ECAB 694 (2007).

## **ANALYSIS -- ISSUE 2**

Appellant did not allege that OWCP erroneously applied or interpreted a point of law. She also did not advance a legal argument not previously considered by OWCP.

In support of her request for reconsideration, appellant submitted a note from Dr. Hernandez prescribing a thumb brace. This note is not relevant to the issue for which OWCP denied appellant's claim, whether the medical evidence established that she developed left carpal tunnel syndrome due to factors of her federal employment. As appellant failed to submit pertinent new and relevant evidence in support of her request for reconsideration, the Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

## **CONCLUSION**

The Board finds that appellant has failed to submit the necessary medical evidence to establish a causal relationship between her employment duties and her diagnosed carpal tunnel syndrome. The Board further finds that OWCP properly declined to reopen her claim for consideration of the merits.

## **ORDER**

**IT IS HEREBY ORDERED THAT** the April 11 and February 15, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 16, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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