

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSE W. MADDEN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, Md.

*Docket No. 96-1851; Submitted on the Record;  
Issued May 26, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs, by its November 30, 1995 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On May 1, 1994 appellant, then a 44-year-old file clerk,<sup>1</sup> filed an occupational disease claim (Form CA-2), alleging that she developed carpal tunnel syndrome in both hands causally related to factors of her federal employment. She stated that she first became aware of the condition in February 1990 and related it to her federal employment on March 25, 1994. The employing establishment indicated that appellant has not stopped work.

By letters dated August 12, 1994, the Office requested additional information from appellant and the employing establishment. Appellant was requested to: (1) describe all activities outside her federal employment which involve repetitive hand or wrist movement, including any hobbies, sports, and musical instruments; (2) describe all previous injuries to the hand, arm or wrist and any diagnosis of gout, arthritis, hypothyroidism, diabetes or a ganglion; and (3) provide a comprehensive medical report from her treating physician which describes her symptoms, results of examinations and test, diagnosis, treatment provided and the doctor's opinion with medical reasons, on the cause of her condition, specifically, whether her work activities contributed to her condition and how. The employing establishment was requested to provide comments from a knowledgeable supervisor on the accuracy of appellant's statements regarding her claim and any points of disagreement; and provide a copy of appellant's position description and physical requirements of her job including any variation from the official description.

On August 18, 1994 the record was updated to include a June 15, 1994 report by Dr. A. Chittchang, a Board-certified internist. Dr. Chittchang stated that he saw appellant on February 25, 1994 for complaint of numbness of fingers on both hands, but no weakness which

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<sup>1</sup> Appellant listed her position title as records analyst clerk, however, on a Standard Form 50 dated November 29, 1993, her position title was given as file clerk.

indicated that she might have early signs of carpal tunnel syndrome. Dr. Chittchang went on to say that hand wrist splints were prescribed to wear at night and during work. He also stated that no nerve conduction study was ordered as appellant's symptoms were minimal and improved with the use of splints.<sup>2</sup>

By letter dated October 1, 1994, the Office made a second request for the additional information requested by letter dated August 12, 1994.

By decision dated November 15, 1994, after receiving no response from appellant, the Office denied appellant's claim finding that the evidence of record failed to establish that an injury was sustained as alleged. Therefore, fact of injury was not established.

By letter dated September 25, 1995, appellant requested reconsideration of the Office's November 15, 1994 decision. In support of the request, appellant submitted a March 2, 1995 neuromuscular evaluation of appellant by Dr. Johannes Reim, a Board-certified neurologist; and February 10, 1995 progress notes from Johns Hopkins Bayview Medical Center.

In the March 2, 1995 neuromuscular evaluation, Dr. Reim stated that the purpose of the study was to evaluate appellant for the presence of carpal tunnel syndromes. Dr. Reim reported his findings on examination and his diagnostic impression of "bilateral carpal tunnel syndromes, left worse than right, without distal axonal degeneration. Of note is that the patient's symptoms are worse in the right hand." Dr. Reim recommended conservative treatment with bilateral wrist splints. In the February 10, 1995 progress notes, by a doctor whose signature is illegible, appellant was seen for complaints of pain in both shoulders, elbows, and wrists, with swelling in both forearms and hands and numbness and tingling in all fingers. A diagnosis was given of "rule out carpal tunnel syndrome."

The Board finds that the refusal of the Office, in its November 30, 1995 decision, to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>3</sup> As appellant filed his appeal with the Board on May 23, 1996, the only decision properly before the Board is the November 30, 1995 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When a claimant fails to meet at least one of

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<sup>2</sup> Also submitted were July 18, 1994 physical therapy notes indicating that someone other than appellant received physical therapy on that date.

<sup>3</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

In her September 25, 1995, request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. In support of her reconsideration request, appellant submitted a March 2, 1995 neuromuscular evaluation, by Dr. Reim, a Board-certified neurologist, in which he stated that the purpose of the study was to evaluate appellant for the presence of carpal tunnel syndromes. Dr. Reim diagnosed “bilateral carpal tunnel syndromes, and recommended bilateral wrist splints, but rendered no opinion on causal relationship. In the February 10, 1995 progress notes, a diagnosis was given of “rule out carpal tunnel syndrome.” None of the evidence submitted was material to the issue of whether appellant sustained carpal tunnel syndrome in the performance of duty causally related to the factors of employment identified by appellant. The Office properly found that the neuromuscular evaluation and progress notes were not relevant to the issue of whether appellant sustained a carpal tunnel syndrome in the performance of duty causally related to factors of her employment since neither of the reports attributed the condition diagnosed to factors of her employment.

As appellant’s September 25, 1995 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

The decision of the Office of Workers’ Compensation Programs dated November 30, 1995 is affirmed.

Dated, Washington, D.C.  
May 26, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> 20 C.F.R. § 10.138(b)(2).