

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE RUDOLPH and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 01-1817; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits.

The Board finds that the Office abused its discretion in refusing to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On May 7, 1999 appellant, then a 50-year-old linen distribution clerk, filed a claim for occupational disease and claim for compensation (Form CA-2) alleging that her left carpal tunnel syndrome and pain in her left arm and hand were caused by her federal employment. Appellant stated that she was initially aware of her condition and that it was caused by her employment on December 28, 1998. She further noted that "surgery was done on right hand which affected left hand and arm."

In a report dated June 21, 1999, Dr. Abram E. Kirschenbaum, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant had been under his care for several years, and that her current symptoms of left carpal tunnel syndrome were not related to an accident at work. He noted that appellant had done well with right carpal tunnel release and treatment of right and left trigger thumbs.

By decision dated August 2, 1999, the Office denied appellant's claim.

By letter dated July 12, 2000, appellant, through counsel, requested reconsideration. In support of her request, appellant submitted a May 15, 2000 report from Dr. David Weiss, an osteopath, who related appellant's history of symptoms, noting that she had pins and needles in both hands, that she would awaken at night with her hands asleep, and that weather changes exacerbated her hand pain. Upon examination of the left hand and wrist, he noted a thickening consistent with stenosing tenosynovitis over the index, middle, ring and little fingers, and tenderness over the left thumb and metacarpophalangeal (MP) joint of the left thumb, and tenderness over the palmar surface of the wrist joint. Appellant had a positive Tinel's sign and

Phalen's test, and a positive carpal compression test. Her left arm circumference was smaller than her right arm, and her left grip strength was noticeably lower than the right. Dr. Weiss diagnosed appellant with left carpal tunnel syndrome. He reported that the December 28, 1998 injury was the competent producing factor for appellant's subjective and objective findings.

By decision dated July 27, 2000, the Office denied appellant's request for reconsideration.

The only decision before the Board on this appeal is the Office's July 27, 2000 decision, denying appellant's request for a merit review of its August 2, 1999 decision. Because more than one year has elapsed between the issuance of the Office's prior decision and July 20, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the prior decision.¹

The Board finds that the Office abused its discretion in refusing to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."²

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or his claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office.³

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a

¹ 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

case.⁵ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

In the present case, appellant submitted additional medical evidence after the August 2, 1999 merit decision. In a report dated May 15, 2000, Dr. Weiss provided results on examination, noting that appellant had bilateral trigger phenomenon to the thumbs and bilateral carpal tunnel syndrome. Dr. Weiss' report is new and relevant, gives a history of appellant's medical problems pertaining to her right trigger finger as well as a right carpal tunnel syndrome and attributes the medical condition to appellant's duties as a hospital worker while pushing a laundry cart. Thus, Dr. Weiss' May 15, 2000 report satisfies the criteria for a merit review under 20 C.F.R. § 10.606(b).

The Board also notes that appellant submitted a medical report dated February 11, 1998 wherein Dr. Kirschenbaum reported a right thumb trigger condition causally related to an April 1997 injury. This report is similarly new and relevant and sufficient to require a merit review pursuant to 20 C.F.R. § 10.606(b).

The July 27, 2000 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for a merit review.

Dated, Washington, DC
May 6, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁵ *David J. McDonald*, 50 ECAB 185 (1998).

⁶ *Id.*