

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

MINDY C. LAWSON, Appellant

and

**U.S. POSTAL SERVICE, Grass Valley, CA,
Employer**

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**Docket No. 03-2069
Issued: December 12, 2003**

Appearances:
Mindy C. Lawson pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 19, 2003 appellant filed a timely appeal of an Office of Workers' Compensation Programs decision dated May 19, 2003 which denied merit review. Because more than one year has elapsed between the last merit decision of the Office dated March 15, 2002 and the filing of this appeal on August 19, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 21, 1997 appellant, then a 37 year-old rural carrier, filed an occupational disease claim, alleging that factors of employment caused bilateral carpal tunnel syndrome. She stopped work on June 9, 1997. On July 15, 1997 appellant underwent carpal tunnel release on the left. By letter dated August 28, 1997, the Office accepted that she sustained bilateral carpal tunnel

syndrome with a left surgical release. On September 17, 1997 she underwent surgical release on the right, which was accepted by the Office on October 20, 1997. Appellant received appropriate compensation and returned to limited duty for four hours per day, on January 14, 1998. On March 5, 1998 she accepted a limited-duty job offer for 4 hours per day with duties of casing mail for 2 hours, then a 15-minute break to be followed by answering the telephone for 30 minutes, casing mail for 30 minutes, routine parcels for 30 minutes and answering the telephone for 30 minutes. On March 12, 1998 appellant's treating Board-certified orthopedic surgeon, Dr. Walter F. Drysdale, attested that the job "appears appropriate to me." In a report dated March 25, 1998, Dr. Drysdale advised that appellant could return to her regular duties without limitations on March 27, 1998. She stopped work on May 31, 1998 and has not returned.

On November 9, 1998 appellant filed a recurrence of disability claim, alleging that delivering mail produced increased bilateral wrist pain which caused her to quit work. The employing establishment indicated that appellant had been on limited duty following her injury but had been cleared to return to work with no restrictions in April 1998. She submitted a report dated September 11, 1998 in which Dr. Drysdale advised that he had treated appellant from February 3, 1997 to September 11, 1998. He described his treatment and diagnosed status post decompression of the right carpal and Guyon's tunnels with residual median nerve symptomatology; polyperipheral neuropathy, etiology unknown; and cervical, thoracic and lumbar strain superimposed upon cervical degenerative joint disease and possibly thoracic and lumbar degenerative disc disease. He concluded that appellant could no longer work as a rural carrier "because of the repetitive use of her hands and working with her hands above her shoulders and having to lift and carry objects."

The Office referred appellant to Dr. David Chan, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated March 3, 1999, Dr. Chan noted that appellant was status post bilateral carpal tunnel decompression surgeries and continued to have subjective complaints of pain. He concluded that appellant had no significant injury-related disability and could work with the preventive restriction that she avoid repetitive or strenuous use of the hands. In an attached work capacity evaluation, Dr. Chan advised that appellant could work eight hours per day with the above prophylactic restrictions. He also evaluated appellant's condition regarding entitlement to a schedule award, noting that she had normal range of motion of the wrists. Dr. Chan stated that appellant had subjective tingling and numbness in the index and long fingers bilaterally with no sensory loss or alteration of sensation, weakness or atrophy noted. The only finding was a positive Tinel's sign on percussion of the left median nerve.

By letter dated February 1, 1999, the Office advised appellant that the claim continued to be open for medical benefits. In a May 17, 1999 report, Dr. Drysdale diagnosed left greater than right thoracic outlet syndrome. Appellant filed a second recurrence of disability claim on June 30, 1999, again indicating that her wrists had not returned to normal. Dr. Drysdale submitted reports in which he reiterated his findings and conclusions. In a letter dated

July 7, 1999, the employing establishment advised that appellant stopped work because she had filed a stress claim and because she was pregnant.¹ By report dated September 8, 1999, Dr. Drysdale advised that appellant was physically fit for a trial at work.

The Office determined that a conflict in medical evidence existed between the opinions of Drs. Chan and Drysdale and on November 2, 1999 referred appellant to Dr. Louis P. Valli, a Board-certified orthopedic surgeon selected as the impartial medical specialist.

In a report dated December 3, 1999, Dr. Valli diagnosed bilateral carpal tunnel syndrome. He noted no objective findings of thoracic outlet syndrome and opined that appellant's subjective complaints would continue. He stated that she could have worked during her pregnancy as long as she restricted repetitive and strenuous use of both hands with occasional pushing and pulling, and that total disability ceased on December 30, 1997 when she returned to work following her surgeries. In an attached work capacity evaluation, Dr. Valli advised that appellant could work eight hours per day with the restriction that she should limit repetitive motions of the wrists to four hours per day and adjust the workstation so that she would not have to reach above her shoulders.

By decision dated February 29, 2000, the Office denied that appellant sustained a recurrence of disability causally related to the accepted bilateral carpal tunnel syndrome. The Office found that she was not entitled to wage-loss compensation after March 27, 1998 when Dr. Drysdale returned her to regular duty.

In a report dated March 23, 2000, an Office medical adviser stated that, based on Dr. Chan's evaluation, appellant was entitled to a 19 percent permanent impairment of the right upper extremity and a 19 percent permanent impairment of the left upper extremity. By decision dated March 31, 2000, appellant was granted a schedule award for a 19 percent impairment of the right upper extremity and a 19 percent impairment of the left upper extremity, for a total of 118.56 weeks of compensation, to run from September 11, 1998 to December 19, 2000.

On December 15, 2000 appellant filed a recurrence of disability claim, alleging that her wrist condition continued to be disabling. By letter dated January 18, 2001, the Office informed appellant that she should follow the appeal rights provided with the February 29, 2000 decision. In a letter dated March 2, 2001, the Office explained how appellant's schedule award was calculated. On March 22, 2001 she requested reconsideration of both the February 29, 2000 denial of her recurrence claim and the March 21, 2000 schedule award. In a letter dated June 19, 2001, appellant explained her disagreement with the opinions of Drs. Chan and Valli. She submitted medical evidence including x-rays of both wrists dated April 27, 2001, magnetic resonance imaging (MRI) scans of the cervical and lumbar spines dated May 12 and 13, 2000, respectively and a report from Dr. Mark Endicott, a Board-certified orthopedic surgeon, dated April 27, 2001. She further submitted a May 4, 2001 report from Dr. Dennis Chu, Board-

¹ The record indicates that the instant claim was adjudicated by the Office under file number 13-1134172. The stress claim, adjudicated by the Office under file number 13-1165702, was denied in a decision dated October 8, 1998. An additional claim, adjudicated by the Office under file number 13-1161686, was accepted by the Office for low back sprain and contusion, with no time lost. Finally, she had a claim for bilateral plantar fasciitis, adjudicated by the Office under file number 13-1153384, was denied in a decision in May 1998.

certified in physical medicine and rehabilitation, and reports from Dr. Pasquale X. Montesano, a Board-certified orthopedic surgeon who specializes in the spine, dated from September 25, 2000 to May 15, 2001.²

In a decision dated March 15, 2002, the Office denied modification of its February 29, 2000 decision finding that appellant did not sustain a recurrence of disability. The Office noted that the record did not contain rationalized medical evidence that related her current condition to the employment-related carpal tunnel syndrome. The Office further denied appellant's request for reconsideration of the March 21, 2000 schedule award, advising that the request was untimely and failed to present clear evidence that the Office erred in reaching that decision.

Appellant thereafter submitted an October 22, 2001 report from Dr. Montesano who noted her bilateral carpal tunnel syndrome and advised that she had internal disc disruption of the lumbar spine and torn annular fibers at C5-6 and C6-7. She also submitted reports from Dr. Robert Wiemer, a Board-certified orthopedic surgeon, dating from October 22, 2001 to February 24, 2003 in which he noted appellant's subjective complaints of wrist pain with activity and diagnosed carpal tunnel syndrome and cervical and lumbar disc disease. Dr. Montesano advised that appellant should avoid heavy lifting and repetitive wrist motion and stated that she could not work.

On March 13, 2003 appellant requested reconsideration and submitted additional form reports from Dr. Wiemer dated March 25 and May 1, 2003. In those reports, Dr. Wiemer diagnosed carpal tunnel syndrome, cervical strain and shoulder girdle strain. He again advised that appellant could not work.

By decision dated May 19, 2003, the Office denied appellant's reconsideration request finding that, as she failed to raise substantive legal questions or include new and relevant evidence, her request was insufficient to warrant merit review.

LEGAL PRECEDENT

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new

² A May 12, 2000 MRI scan of the cervical spine demonstrated mild annular bulges at C5-6 and C6-7. A May 13, 2000 MRI scan of the lumbar spine was negative with degenerative change at T11-12. Bilateral wrist x-rays dated April 27, 2001 demonstrated no acute bony abnormality with a possible subchondral cyst formation on the left. In an April 27, 2001 report, Dr. Endicott evaluated appellant's bilateral wrist pain, advising that she had no "new and further disability." In a report dated May 4, 2001, Dr. Chu diagnosed neck and lumbar strains, cervical disc herniation, lumbar radiculopathy and status post bilateral carpal tunnel releases. Dr. Montesano noted appellant's history and complaints and diagnosed herniated discs at C5-6 and C6-7 and an annular tear at L4-5.

³ 20 C.F.R. § 10.608(a) (1999).

evidence not previously considered by the Office.⁴ Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated May 19, 2003 denying appellant's application for review. Since more than one year had elapsed between the dates of the Office's most recent merit decisions dated March 15, 2002 regarding appellant's recurrence claim and March 21, 2000 regarding her schedule award and the filing of appellant's appeal with the Board on August 19, 2003, the Board lacks jurisdiction to review the merits of her claim.⁶ In her March 13, 2003 reconsideration request, appellant maintained that she had greater than a 19 percent bilateral upper extremity disability and had been unable to work since June 1, 1998, based on the opinions of Drs. Montesano, Weiner and Chu. Appellant had previously made these contentions in her March 22, 2001 request for reconsideration before the Office and the Board has held that the submission of evidence which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.⁷ She, therefore, did not show that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office.⁸

Appellant also submitted a number of form reports from Dr. Wiemer who merely reiterated his conclusion that appellant could not work, but the physician provided no explanation other than his recitation that she had pain in her wrists. She submitted a report from Dr. Montesano who did not provide any opinion regarding her ability to work. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Furthermore, evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹⁰ Appellant did not submit medical evidence to support that she sustained an increased impairment arising since her 2000 schedule award that would entitle appellant to an award greater than the bilateral 19 percent she had previously received for her upper extremity impairments. Lastly, the Board notes that appellant has been diagnosed with a number of conditions that have not been accepted as employment related. Appellant failed to submit relevant new and pertinent evidence

⁴ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

⁶ 20 C.F.R. § 501.3(d)(2).

⁷ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁸ *Supra* note 4.

⁹ *Edward W. Malaniak*, *supra* note 7.

¹⁰ *Id.*

not previously considered by the Office. As appellant did not meet any of the regulatory requirements, she was not entitled to a merit review.¹¹

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review on May 19, 2003.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2003
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See *James E. Norris*, 52 ECAB 93 (2000).