

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

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**JOHN P. LEWIS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hillsbor, OR, Employer**

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**Docket No. 03-2200  
Issued: December 16, 2003**

*Appearances:*  
*John P. Lewis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 3, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs decision dated July 8, 2003, which denied appellant's claim as appellant had not met the requirements for establishing that he sustained an injury in the performance of duty. He also appealed the decision dated August 1, 2003 which denied merit review of that decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues on appeal are: (1) whether appellant has established that he sustained an injury causally related to his employment; and (2) whether the Office properly denied merit review of appellant's claim on August 1, 2003.

**FACTUAL HISTORY**

Appellant, then a 50-year-old mail carrier, filed a claim on May 12, 2003 alleging that, due to the constant repetitive motion of holding mail while casing and delivering, that the tendons in his left wrist were pulling away from the natural position. In support

thereof, he submitted a statement wherein he indicated that he sought medical treatment because he was having pain in his left wrist while holding, casing and delivering mail. In further support, appellant submitted a medical report indicating that, on January 2, 2003, appellant saw Dr. Hans S. Moller, III, a Board-certified orthopedic surgeon, and he indicated:

**“SUBJECTIVE**

“[Appellant] is seen back here today. He is still having problems with his left wrist, dorsal extensor compartment V and distal radial ulnar joint. This area is tender to palpitation and use. Primarily when [appellant] is doing his job as a postman holding for four hours sorting and then reaching for mail. He thinks his holding position with his palm up on the shelf is the worst position.

**“ASSESSMENT/PLAN**

“Plan: At this point, [appellant] is going to go ahead and have an orthoplast brace made. We reviewed his old notes from April and his x-rays show distal radial and ulnar joint changes and sclerosis of the proximal carpal row at the lunate facet. I think we will try to brace first and, if this is ineffective, an injection in this area may be the next try.”

Appellant’s supervisor submitted a statement dated May 19, 2003 wherein he indicated that he did not recall appellant ever reporting an injury to his wrist.

By letter dated May 21, 2003, the Office requested that appellant submit further information. No further evidence was received and, by decision dated July 8, 2003, the Office denied appellant’s claim for benefits. The Office noted that, although the evidence supported that the claimed event occurred, there was no medical evidence that provided a diagnosis of a medical condition in connection thereof.

On July 13, 2003 appellant requested reconsideration. In support thereof, he submitted an additional personal statement describing his job duties in further detail and discussing the progression of the pain in his wrist. Appellant also submitted a medical report by Dr. Moller wherein he indicated that appellant had “left wrist pain in dorsal extensor compartment V and distal radial ulnar joint” due to overuse and repetitive movements.

By decision dated August 1, 2003, the Office determined that the evidence was not sufficient to warrant a review of the case on the merits and affirmed the July 8, 2003 decision.

**LEGAL PRECEDENT – Issue 1**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</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 the 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 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.<sup>4</sup>

### *ANALYSIS – Issue 1*

In the instant case, the Office found that appellant had established that the claimed events occurred. However, the Office properly found that the medical reports do not establish that appellant was diagnosed with a condition as a result thereof. Dr. Moller, when reporting with regard to appellant’s January 2, 2003 visit, indicated that appellant was having problems with his left wrist. However, he failed to make a specific diagnosis. The Board has frequently explained that statements about an appellant’s pain, not corroborated by objective findings of disability or a diagnosis, do not constitute a basis for payment of compensation.<sup>5</sup> As no other medical evidence was timely submitted and Dr. Moller’s report does not establish that appellant sustained a condition as a result of his federal employment, the Office properly denied benefits.

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<sup>2</sup> *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>4</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>5</sup> *See John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

## LEGAL PRECEDENT – Issue 2

Section 8128(a) of the Act<sup>6</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>7</sup>

“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.

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).<sup>8</sup> 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 evidence not previously considered by the Office.<sup>9</sup>

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 of the merits.<sup>10</sup>

## ANALYSIS – Issue 2

The only new evidence submitted in support of appellant’s request for reconsideration was his statement and a new report by Dr. Moller, wherein he stated that appellant had “left wrist pain in dorsal extensor compartment V and distal radial ulnar joint” due to overuse and repetitive movements. However, this report did not state that a specific condition had been diagnosed with regard to this pain. Therefore, the new evidence did not constitute relevant and pertinent new evidence not previously considered by the Office.

Appellant has failed to show that the Office erred in interpreting the law and regulations governing his entitlement to compensation under the Act, nor has he advanced any relevant legal argument not previously considered by the Office. Inasmuch

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.608(a)(1999).

<sup>9</sup> 20 C.F.R. § 10.606(b)(1)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b).

as appellant failed to meet any of the three requirements for reopening his claim for merit review, the Office properly denied his reconsideration request on August 1, 2003.

**CONCLUSION**

The Board finds that the Office properly determined that appellant failed to establish that he sustained an injury in the course of employment. The Board also finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review.<sup>11</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1 and July 8, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Issued: December 16, 2003  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> The record contains additional evidence that was submitted after the Office issued its August 1, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 20 C.F.R. § 10.606(b).