U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH N. KOMPERUD and DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Quantico, VA

Docket No. 02-873; Submitted on the Record
Issued June 9, 2003

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an occupational disease in the performance of her federal duties; and (2) whether the Office of Workers' Compensation Program, abused its discretion in denying appellant's request for reconsideration.

On July 1, 1999 appellant, then a 57-year-old commissary employee, filed a notice of occupational disease and claim for compensation alleging that her employment duties, including repetitive lifting, stooping and bending while stocking grocery shelves caused her to sustain bilateral carpal tunnel syndrome. Appellant's medical history included a work-related right hip and groin strain in February 1994, a work-related right knee contusion in 1994 and a thoracic and lumbar strain in 1998. At the time she filed the present Form CA-2, appellant was receiving compensation for total temporary disability. She was terminated from her employment on April 21, 1998 due to her inability to perform her full regular duties and has not worked since that time.

In a July 6, 1999 report, Dr. Alan P. Alfano, a specialist in physical medicine and rehabilitation, wrote that appellant "presents with a complaint of left greater than right hand numbness and pain.… Pain is in the left first, second and third digits. She has similar pain and numbness in her right hand. The left hand has been bothering [her] for greater than 18 months.… She had a positive Phalen's on the left, negative on the right and a questionable Tinel's on the left.…" She had "electrodiagnostic evidence of moderate median neuropathy at the wrist on the left, mild median neuropathy at the wrist on the right side with no evidence of denervation."

In a September 23, 1999 letter, received on September 27, 1999, appellant described her repetitive job duties, indicated that she had the current symptoms since November 1997 and that Dr. Alfano first addressed the symptoms in January 1998 and he gave her splints to wear in June 1998.

In a September 28, 1999 decision, the Office denied appellant's claim finding that appellant had not established fact of injury.

In an August 14, 2000 letter, appellant requested reconsideration. In support of her request, appellant submitted unsigned medical progress notes from June 2000, indicated that she received treatment for carpal tunnel and discussed possible surgery. In a June 23, 2000 report, Dr. Alfano wrote that his notes indicate carpal tunnel syndrome was first mentioned in March 1999. He added that "It is my medical opinion that it is more than likely that [appellant's] work has contributed significantly to the development of [her] carpal tunnel syndrome."

In a January 24, 2001 report, Dr. Noel Rogers, a specialist in physical medicine and rehabilitation, wrote that he initially saw appellant on April 18, 2000 and that she had carpal tunnel syndrome. He stated that "[Appellant] related the carpal tunnel syndrome to her 19 years of use of her hands with repetitive motion…. I think it would be reasonable to assume her carpal tunnel syndrome is related to her prior work status of doing work, in which she did regular and repetitive motions of the wrist."

In a November 24, 2000 statement, Paul Schultz, appellant's immediate supervisor from 1979 to 1998, wrote that appellant did repetitive work such as stocking shelves and receiving merchandise for the years in question.

In a May 10, 2001 decision, the Office modified its September 28, 1999 decision, accepting fact of injury, but denying the claim due to the insufficiency of the medical evidence. In a July 21, 2001 statement, Debbie Girard wrote that on November 30, 1998 she drove appellant to her appointment with Dr. Alfano. Upon returning from her appointment, appellant had on a left wrist splint that she said was to help with carpal tunnel syndrome.

In an August 21, 2001 letter, appellant requested reconsideration. In a September 11, 2001 decision, the Office denied reconsideration.

Appellant requested reconsideration on October 19, 2001. The only new evidence submitted was a September 16, 1999 note from Dr. Richard E. Ranels, a neurologist, that stated "Bilateral carpal tunnel syndrome is not likely to return once surgically addressed. However, the longer one waits to correct the situation the poorer the resolution of the previous injury."

In a November 26, 2001 decision, the Office denied reconsideration finding that appellant had submitted no new evidence.

The Board finds that appellant has not met her burden of proof to establish that she developed carpal tunnel syndrome as result of her employment duties. An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact 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 are causally related to the employment injury.[2] These are the essential elements of each

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

While the preponderance of the evidence supports that appellant has had carpal tunnel syndrome for a number of years, the medical evidence is insufficient to meet appellant's burden of proof. As mentioned above, the medical evidence must explain the nature of the relationship between appellant's carpal tunnel syndrome and specific employment factors. It must be based on an accurate history and be of reasonable medical certainty.

Dr. Alfano's July 6, 1999 report does not provide a rationalized opinion that causally relates her medical condition to her employment factors. In his June 23, 2000 report, Dr. Alfano wrote, "It is my medical opinion that it is more than likely that your work has contributed significantly to the development of your carpal tunnel syndrome," but he does not provide a rationalized explanation supporting that opinion, nor does he explain which employment factors caused the condition and how physiologically the factors led to her medical condition.

In his January 24, 2001 report, Dr. Rogers indicated, "it would be reasonable to assume her carpal tunnel syndrome is related to her prior work status of doing work, in which she did regular and repetitive motions of the wrist" but he does not explain how or why he feels it is related. Dr. Rogers does not indicate an awareness of appellant's job duties and he was unable to explain why any specific employment factor caused appellant's carpal tunnel syndrome. A fully rationalize report is especially important because appellant had not worked for a year prior to her filing the claim and the medical evidence suggests that during that time her right hand continued to worsen.

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[4] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion. To require the Office to reopen a case for merit review under section 8128(a) of the Act,[5] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[6] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[7] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[8]

The Board has held that the submission of evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[9] The Board also has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.[10]

In the present case, appellant has not established that the Office abused its discretion in its September 11 and November 26, 2001 decisions, by denying her request for a review on the merits of its May 10, 2001 decision, under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The only new evidence appellant submitted with her August 21, 2001 reconsideration request was a note from Ms. Girard that supported appellant's contention that she had carpal tunnel syndrome in 1998. The only new evidence appellant submitted with her October 19, 2001 reconsideration request was a note from Dr. Ranels that supported appellant's contention that she had carpal tunnel syndrome in 1999.

The critical issue is a lack of rationalized explanation of the causal relationship between appellant's condition and her work factors, thus the evidence submitted is immaterial to that point.

[5] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[6] 20 C.F.R. §§ 10.606(b)(2).

[7] 20 C.F.R. § 10.607(a).

[8] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[9] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[10] *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

The November 26, September 11 and May 10, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member