

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAISY PRAY and DEPARTMENT OF THE ARMY,
DIRECTORATE SAFETY DIVISION, Fort Stewart, GA

*Docket No. 03-75; Submitted on the Record;
Issued March 12, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant met her burden of proof in establishing that her right thumb trigger was caused by factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration on June 13 and September 26, 2002.

On January 22, 2002 appellant, then a 50-year-old recovery claims examiner, filed a notice of occupational disease, alleging that, on or before August 21, 2001, she had swelling and pain in her right thumb due to typing. She submitted progress notes from her treating physician Dr. S. Mark Kamaleson, a Board-certified orthopedic surgeon, dated from August 21, 2001 through January 21, 2002. Dr. Kamaleson indicated that appellant underwent carpal tunnel release in 2000, but still had pain and weakness in her thumb area. He diagnosed right thumb trigger. He also noted that Phalen's sign and Tinel's percussion on the right side were negative. An electromyogram (EMG) performed on February 15, 2002 showed moderate bilateral carpal tunnel syndrome. Appellant underwent a second right thumb trigger release on September 6, 2001. She also submitted a note from Nurse Linda S. Smith dated July 8, 1999 and follow-up notes from Dr. Kamaleson dated February 26 and March 19, 2002. Nurse Smith's handwritten note stated that appellant has pain in her thumb when she uses a computer. Dr. Kamaleson diagnosed bilateral carpal tunnel syndrome and opined that appellant was not disabled.

By decision dated March 26, 2002, the Office denied appellant's claim for compensation since the medical evidence was insufficient to establish that her condition was caused by employment factors.

By letter dated April 2, 2002, appellant requested reconsideration and resubmitted Dr. Kamaleson's progress notes, Nurse Smith's report, a September 6, 2001 operative report, a copy of her Form CA-2, the February 15, 2002 EMG report and a copy of her position description.

By decision dated June 13, 2002, the Office denied appellant's request for reconsideration finding that the evidence submitted was duplicate evidence and was insufficient to warrant merit review.

By letter dated September 12, 2002, appellant requested reconsideration and resubmitted the operative report, Nurse Smith's note, more documents related to the September 6, 2001 trigger release and copies of administrative records from the hospital. She also submitted a copy of a letter asking Dr. Kamaleson what causes trigger finger and why typing or working on a computer did not cause her condition. The letter contains handwritten responses, presumably from Dr. Kamaleson, indicating that trigger finger is caused by swelling of the tendon and that it can be caused by typing or working on a computer.

By decision dated September 26, 2002, the Office denied appellant's request for reconsideration finding that the evidence submitted was duplicate and cumulative and insufficient to warrant merit review.

The Board finds that appellant has failed to meet her burden of proof in establishing that her right thumb trigger was caused by factors of her federal employment.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant submitted medical evidence from her treating physician diagnosing right thumb trigger and moderate bilateral carpal tunnel syndrome and an EMG report showing moderate bilateral carpal tunnel syndrome. She alleged that her right thumb trigger was caused by typing at work. Appellant also has the burden to submit medical evidence establishing that the employment factor identified, typing, was the proximate cause of her condition for which she claims compensation.² In this case, there are no medical reports of record, which address the cause of appellant's condition or mention any employment factors. Appellant's treating physician diagnosed right thumb trigger and bilateral carpal tunnel syndrome yet he did not mention any employment factors or provide any opinion on the cause of appellant's condition. Nurse Smith indicated that appellant has pain in her right thumb when she uses a computer, however, her note is not a medically rationalized narrative report, based upon a complete factual

¹ *Haydee Martinez*, Docket No. 01-833 (issued October 29, 2001).

² *Id.*

and medical background. The case of *Joseph N. Fassi*³ also establishes that a nurse practitioner is not considered a physician under the Federal Employees' Compensation Act⁴ and thus Nurse Smith's report has little probative value in this case. In the case, of *Thomas Griffith*,⁵ appellant attributed his bilateral carpal tunnel syndrome to using crimping tools in a repetitive fashion and rubbing solvent on cupolas and rubbing the excess solvent off. He submitted one report from his treating physician describing his employment duties, but his physician did not opine as to causal relationship. The Board found, as neither appellant's treating physician nor any other physician provided an opinion on the causal relationship between his diagnosed bilateral carpal tunnel syndrome and employment factors, appellant did not meet his burden of proof. In the present case, appellant also did not submit any medical reports providing an opinion on the causal relationship between her diagnosed right thumb trigger and employment factors. Likewise, appellant has failed to submit the necessary medical evidence to meet her burden of proof and the Office properly denied her claim.

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's case on June 13 and September 26, 2002, for further consideration of the merits of her claim.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁷

In this case, the relevant issue is medical in nature. Appellant's claim was denied on March 26, 2002 because she did not submit rationalized medical evidence establishing a causal relationship between her condition and employment factors. In support of her first request for reconsideration dated April 2, 2002, she resubmitted progress notes from Dr. Kamaleson, Nurse Smith's report, the operative report, a copy of her Form CA-2 and the EMG. This evidence is duplicative evidence, as it was already considered by the Office in the first decision. In the case, of *Keith Sharp*,⁸ appellant submitted evidence already in the record and the Board found that the submission of evidence or legal argument, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.⁹ In the present case, appellant also

³ 42 ECAB 677 (1991).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ Docket No. 02-0379 (issued June 20, 2002).

⁶ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁷ 20 C.F.R. § 10.608(a).

⁸ Docket No. 00-2459 (issued May 2, 2002).

⁹ *See also Alton L. Vann*, 48 ECAB 259 (1996).

did not submit any new or relevant evidence sufficient to warrant merit review. The copy of appellant's position description was new to the record, however, it is irrelevant to the underlying issue since it is not medical evidence discussing causal relationship.

In appellant's second request dated September 12, 2002, she resubmitted the operative report and Nurse Smith's note. She also submitted records relating to her trigger release procedure, administrative records from the hospital and a copy of the letter to Dr. Kamaleson containing handwritten responses. The records pertaining to the trigger release performed on September 2, 2001 are irrelevant to the issue in this case, since they do not contain a rationalized medical opinion on causal relationship. The copy of the letter from appellant to her treating physician is also of little probative value, since it does not contain a rationalized medical opinion regarding the cause of appellant's condition. Appellant asked Dr. Kamaleson "what causes trigger finger" and he replied "swelling of tendon." She also asked "why is this not caused by typing and working on computer" and he replied "it can be." Also, she asked "why is the problem back now that I am back to capable at work" and he stated "could be something else." Dr. Kamaleson has not provided a rationalized opinion on the causal relationship between appellant's diagnosed condition and employment factors, which is the underlying issue in this case. This evidence is also insufficient to warrant merit review since the answers are incomplete and speculative and are not supported by medical rationale. Appellant did not submit any relevant and pertinent new evidence sufficient to reopen her case and the Office properly denied this request for review.

Since appellant 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, she did not establish that the Office abused its discretion in denying her requests for reconsideration.

The September 26, June 13 and March 26, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member