

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

JEANETTE DAVIAS, Appellant

and

**DEPARTMENT OF DEFENSE, COAST
GUARD, Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 03-328
Issued: April 15, 2004**

Appearances:
Jeanette Davias, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 28, 2002 appellant filed a timely appeal from a November 14, 2001 decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an injury in the performance of duty. Appellant also filed an appeal from an August 16, 2002 decision of the Office, which denied her request for reconsideration. 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 are: (1) whether appellant sustained a ganglion cyst on her left middle finger in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 13, 2001 appellant, then a 54-year-old program analyst, filed a claim for occupational disease alleging that she developed a ganglion cyst on her left middle finger due to extensive data entry and keyboarding activities. Appellant submitted a June 22, 2001 medical

report from Dr. Ngoc-Ha Nguyen, a Board-certified internist, who found a ganglion cyst in appellant's left third finger. Appellant contended that the ganglion cyst formation was caused by overstress of her finger tendon, which was caused by repetitive finger and hand movements at work. By letter dated September 26, 2001, the Office requested that appellant submit further information. Appellant submitted an undated statement contending that her work duties included extensive use of the computer and adding machine, which caused her to have several sore fingers by the end of the workweek. Appellant first noticed a bump on her finger in May 1996 and in July 1996 had surgery for the removal of the ganglion cyst. She noted that, prior to May 2001, she did not have any cyst-related problems. In a statement dated June 11, 2001, appellant's supervisor described her job duties and workstation and indicated that she worked a standard employee schedule. She also attached a position description describing appellant's job and copies of appellant's leave records.

A May 18, 2001 progress note by Dr. Rochelle M. Nolte, a Board-certified family practitioner, indicated that she treated appellant for left middle finger cyst and referred her to a hand specialist. In a disability certificate dated May 22, 2001, Dr. Jeffrey L. Lovallo, a Board-certified orthopedic surgeon who specializes in hand surgery, indicated that appellant was limited in the use of her hand due to a ganglion cyst. Other treatment reports from Dr. Nguyen noted treatment of appellant for carpal tunnel syndrome in both wrists and hands, elbow pain and neck pain.

By decision dated November 14, 2001, the Office denied appellant's claim finding that she failed to establish that her ganglion cyst was causally related to factors of her employment.

By letter dated December 11, 2001, appellant requested reconsideration. In support of her request, she resubmitted the June 22, 2001 report of Dr. Nguyen, which had been reviewed by the Office. She also submitted a surgical report from Dr. Lovallo concerning the June 11, 2001 excision of the ganglion cyst on the left middle finger. By decision dated August 16, 2002, the Office denied appellant's request for reconsideration, finding that the evidence submitted by appellant was repetitious.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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

In an occupational disease claim, a claimant must submit: (1) medical evidence establishing the existence of the disease or condition on which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.⁴ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified as causing her condition and, taking these factors into consideration as well as findings upon physical examination and the medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office properly denied appellant's claim as she failed to submit rationalized medical evidence to establish that her ganglion cyst was caused by her federal employment work activities. None of the physicians of record provided a rationalized opinion establishing that appellant's ganglion cyst was caused by her employment. Dr. Nolte merely indicated that appellant had a cyst and did not provide an opinion with regard to causal relationship. Dr. Lovallo noted that appellant was restricted in the use of her hand but did not address causation. The only physician to provide any opinion on whether appellant's employment caused a ganglion cyst was Dr. Nguyen. Dr. Nguyen addressed this issue in a very brief statement, in which she opined that appellant's ganglion cyst formation was due to overstress of her finger tendon, which was caused by repetitive finger and hand movements at work. However, the physician did not provide a full medical history, details of the physical examination, or an explanation for her stated conclusion. Accordingly, Dr. Nguyen's opinion does not constitute rationalized medical opinion evidence. Appellant has failed to establish that the ganglion cyst on her left middle finger was causally related to her federal employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's federal regulation provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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

³ *Id.*

⁴ *Calvin E. King*, 51 ECAB 394, 401 (2000).

⁵ *Id.*

⁶ 20 C.F.R. § 10.606(b)(2)(i-iii).

ANALYSIS -- ISSUE 2

Appellant did not offer any argument contending that the Office erroneously applied or interpreted a specific point of law or advanced any new legal argument. Appellant submitted Dr. Lovallo's report of appellant's surgery to have her ganglion cyst removed; however, this report does not address the relevant issue of whether appellant's ganglion cyst was causally related to her employment. The medical report of Dr. Nguyen was previously considered by the Office.⁷ Accordingly, the Office properly denied further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for compensation and properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 16, 2002 and November 14, 2001 are affirmed.

Issued: April 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Board has held that material that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case. *James A. England*, 47 ECAB 115 (1995).