

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

MARY E. HOOD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Quincy, FL, Employer**

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**Docket No. 04-456
Issued: April 29, 2004**

Appearances:
Mary E. Hood, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 11, 2003 appellant filed a timely appeal from a September 23, 2003 merit decision of the Office of Workers' Compensation Programs which denied her claim, and a November 14, 2003 decision in which the Office 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 met her burden of proof to establish that she sustained an injury causally related to factors of employment; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 31, 2003 appellant, then a 43-year-old rural carrier, filed an occupational disease claim, alleging that factors of employment caused right carpal tunnel syndrome with symptoms

of pain in the right arm and numbness in the hand. She did not stop work. In support of her claim, appellant submitted a March 6, 2003 report in which Dr. D. Christian Berg, a Board-certified orthopedic surgeon, advised that he was treating appellant for a recurrence of right carpal tunnel syndrome which, he stated, appellant felt was work related. He noted tenderness on examination and positive Tinel's and Phalen's signs and reported an impression of forearm pain.

By letter dated August 12, 2003, the Office advised appellant that the information submitted with her claim was not sufficient to determine whether she was eligible for benefits under the Federal Employees' Compensation Act.¹ The Office advised appellant of the additional medical and factual evidence needed. She was directed to provide a comprehensive medical report showing a diagnosis of any condition resulting from her federal work activities, and a physician's opinion, with medical reasons for such opinion, as to how the work activities resulted in the diagnosed condition. The Office afforded appellant 30 days to submit the requested information.

In a letter dated August 13, 2002, appellant described her workday including the duties which she felt contributed to her right carpal tunnel syndrome. She stated that the repetitive nature of bundling mail and delivering it into rural boxes was painful. On September 9, 2003 appellant informed the Office that she had a doctor's appointment on October 9, 2003.

By decision dated September 23, 2003, the Office denied the claim on the grounds that the evidence submitted was insufficient to establish entitlement to compensation. On October 29, 2003 appellant requested reconsideration and advised that she was enclosing a medical report. A medical report, however, was not included with the reconsideration request. On November 14, 2003 the Office denied appellant's reconsideration request finding that, as she neither raised substantive legal questions or included new and relevant evidence, her request was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.²

¹ 5 U.S.C. §§ 8101-8193.

² *Solomon Polen*, 51 ECAB 341 (2000).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁵

ANALYSIS -- ISSUE 1

Appellant did not submit evidence sufficient to meet the requirements to establish that she sustained an injury in the performance of duty. The only medical evidence of record is Dr. Berg's March 6, 2003 report in which he merely diagnosed "forearm pain" and expressed no opinion regarding causal relationship other than stating that appellant felt her condition was work related. While appellant submitted a factual statement identifying work factors which she believed contributed to her condition, Dr. Berg's report is insufficient to establish the presence or existence of the disease or condition for which compensation is claimed or to establish that the diagnosed condition is causally related to the employment factors identified by the claimant. Appellant's belief of a causal relationship is not relevant as causal relationship must be established by probative medical evidence from a physician.⁶ Appellant therefore failed to establish that she sustained right carpal tunnel syndrome causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁷ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸ Evidence or argument that repeats or duplicates

³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *See Michael E. Smith*, 50 ECAB 313 (1999).

⁷ 20 C.F.R. § 10.606(b)(2) (1999).

⁸ 20 C.F.R. § 10.608(b) (1999).

evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS -- ISSUE 2

In a letter requesting reconsideration, appellant merely asserted that she had submitted additional medical evidence for consideration by the Office. She did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant indicated that she submitted an additional medical report with her October 29, 2003 reconsideration request, the record before the Board does not contain this report. She therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.¹¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she developed right carpal tunnel syndrome causally related to factors of employment. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

¹⁰ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

¹¹ The Board notes that appellant retains the right to submit additional evidence to the Office along with a valid request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 14 and September 23, 2003 be affirmed.

Issued: April 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member