

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH B. EILAND and U.S. POSTAL SERVICE,
POST OFFICE, Saint Louis, MO

*Docket No. 03-1597; Submitted on the Record;
Issued January 21, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof in establishing a recurrence of disability, commencing February 19, 2003, due to a February 24, 1981 employment injury; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On February 24, 1981 appellant sustained an injury to her right thumb and right knee in a fall at work. The Office subsequently accepted appellant's claim for myositis of the arms and shoulders, arthritis of the right thumb and arthrodesis of the metacarpophalangeal joint. On September 20, 1995 appellant filed a claim for a recurrence of disability, No. A11-46635, commencing August 31, 1995, due to the February 24, 1981 employment injury. Appellant stated that, since the original injury, she was on limited duty with no lifting over 10 pounds and no pushing or pulling over 45 pounds. On October 24, 1995 appellant filed a claim for an occupational disease, No. A11-146068, alleging that on May 1, 1995 she sustained a torn tendon of the rotator cuff of the left shoulder. Appellant explained that, since her injury in 1981, the employing establishment had no light-duty assignments and that she had to use her left arm and hand to replace her right hand in all work assignments which caused her problem. On December 17, 1995 appellant filed a claim for an occupational disease, No. A11-146067, alleging that on May 19, 1995 she sustained carpal tunnel syndrome in the left hand at work. Appellant stated that since her injury in 1981 she had been using her left hand to compensate for the injury to her right hand. The Office accepted appellant's claim for a recurrence of disability, No. A11-46635, commencing August 31, 1995. The Office also accepted appellant's claim for a left shoulder strain, No. A11-146068, and accepted appellant's occupational claim for mild left carpal tunnel syndrome, No. A11-146067. The Office doubled appellant's claim for a shoulder strain and mild left carpal tunnel syndrome into the recurrence claim.

In a statement dated January 7, 1996, appellant noted that a doctor had diagnosed myositis of the left shoulder and that she was placed on permanent light duty. Appellant said that the employing establishment initially did not have light-duty jobs for her and assigned her

work outside her restrictions of no heavy lifting but eventually she was assigned to a “very light-duty” job in the computer room where she ran “reports and audits.” The Office indicated that appellant planned to retire on March 29, 1997. On March 14, 1997 the Office issued schedule awards for a 4 percent impairment of the right upper extremity and 11 percent of the left upper extremity.

On March 17, 2003 appellant filed a claim for a recurrence of disability, commencing February 19, 2003, due to the February 24, 1981 employment injury. Appellant stated that on February 19, 2003 her shoulder and arm were numb upon waking up. She stated that it felt like electricity was “running throughout” her shoulder and that it had since become “so painful” that she could “hardly stand it.” Appellant stated that she had been diagnosed with a rotator cuff tear, that she was retired and that it was the same arm as the accepted injury.

By letter dated April 3, 2003, the Office requested additional information from appellant including a narrative medical report from her treating physician addressing the relationship between her ability to work and the accepted work-related condition.

In an undated letter to the Office, appellant noted that she was never fit for full duty prior to her retirement in 1997, and a magnetic resonance imaging (MRI) scan was taken showing that she had a rotator cuff tear. She stated that the pain she was experiencing was from the rotator cuff tear which was work related. She did not submit any medical evidence.

By decision dated May 13, 2003, the Office denied appellant’s claim, stating that the evidence of record was not sufficient to establish that her current medical condition was due to the accepted work injury.

By letter dated May 19, 2003, appellant requested reconsideration of the Office’s May 13, 2003 decision. She did not submit any medical evidence.

In a nonmerit decision dated June 3, 2003, the Office denied appellant’s request for reconsideration.

The Board finds that appellant failed to meet her burden of proof in establishing a recurrence of disability, commencing February 19, 2003, due to the February 24, 1981 employment injury.

An employee who claims benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of her claim.¹ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty

¹ *Richard E. Komen*, 47 ECAB 388, 389 (1996).

job requirements.² The employee must present rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

The Office accepted that appellant sustained myositis of the arms and shoulders, arthritis of the right thumb, arthrodesis of the metacarpophalangeal joint, left shoulder strain and mild left carpal tunnel syndrome. Prior to retirement from the employing establishment in March 1997, appellant worked in light-duty-positions due to her employment injuries. Her claim alleged that on February 19, 2003 she sustained a recurrence of disability due to her accepted injuries. Although the Office informed appellant that she must submit medical evidence to establish her claim, she did not comply. Appellant submitted a statement explaining that she believed her rotator cuff tear was a recurrence of the original injury but it was not accompanied by any medical evidence. Appellant's belief of a causal relationship does not negate the necessity of submitting probative medical evidence. She therefore failed to establish that she sustained a recurrence of disability, due to the February 24, 1981 employment injury, commencing February 19, 2003.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of Act, the Office's regulations 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.⁴ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁵

In this case, appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office. Appellant did not submit any additional medical evidence to support her claim.⁶ The Office therefore properly denied appellant's request for reconsideration.

² *Id.*; *Cynthia W. Judd*, 42 ECAB 246, 250 (1990).

³ *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

⁴ Section 10.606(b)(2)(i-iii).

⁵ Section 10.608(a).

⁶ The record contains medical evidence appellant submitted on June 6, 2003 following the Office's decisions. The Board has held that it is precluded from reviewing evidence which was not before the Office at the time it issued its decisions. 20 C.F.R. § 501.2(c); *see Sherry L. McFall*, 51 ECAB 436, 440 n.17 (2000); *Thomas W. Stevens*, 50 ECAB 288, 289 n.2 (1999). Appellant may resubmit the medical evidence to the Office with a request for reconsideration. *See* 5 U.S.C. § 8128.

The June 3 and May 13, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 21, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member