United States Department of Labor
Employees' Compensation Appeals Board

JUANITA DEMORY, Appellant	)	
and	)	**Docket No. 04-85**
	)	**Issued: March 19, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
James D. Muirhead, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 14, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated December 6, 2002 in which the Office denied appellant's claim on the grounds that she failed to establish that her claimed condition was caused by factors of employment. Appellant also appealed decisions dated July 1 and September 22, 2003 in which the Office denied merit review. 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 on appeal are: (1) whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 3, 2002 appellant, then a 33-year-old letter carrier, filed an occupational disease claim alleging that she developed carpal tunnel and shoulder problems in the performance of duty. Appellant indicated that she first became aware of the injury on January 29, 2002 and realized it was caused or aggravated by her employment on September 3, 2002.

In support of her claim, appellant submitted an August 29, 2002 patient status report that contained a diagnosis of shoulder strain.[1] In a September 18, 2002 report, Dr. Cornelius I. Nicoll, an orthopedic surgeon, noted that appellant was seen on September 12, 2002 for complaints of pain to both shoulders and numbness to both wrists. He diagnosed impingement syndrome for the left wrist and recommended physical therapy.

In a letter dated September 25, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit additional supportive factual and medical evidence. A copy of the letter was also provided to the employing establishment and appellant's physician.

In a January 29, 2002 electromyography (EMG) and nerve conduction report, Dr. Gary Sclar, a Board-certified neurologist, noted that appellant was employed as a mail carrier but had last worked about seven months previously. He indicated that appellant's "complaints involved a history (one year) of progressive shooting pains that started on the right side," which were predominantly on the ulnar side of the hand and arm. Dr. Sclar noted that the electrical study revealed mild median neuropathies across both wrists as found with carpal tunnel syndrome, and large-sized motor unit action potentials in the right bilateral abductor pollicis brevis muscles revealed axonal damage to the nerve with no evidence for neuropathic processes.

In a September 3, 2002 statement, appellant indicated that she had been employed with the employing establishment since 1995, that she had cased mail for approximately two and a half hours a day, and subsequently made deliveries on her route. She alleged that she continuously threw and retrieved mail from slots, and was "constantly fingering" the mail while making deliveries. Appellant also indicated that the January 29, 2002 EMG demonstrated that she had carpal tunnel and that she did not realize that it was caused by her work until she spoke to her attorney on September 3, 2002. Appellant stated that she did not have any outside activities that would cause the condition. A copy of her job description was also provided.

In a September 12, 2002 duty status report, Dr. Nicoll[2] made findings of carpal tunnel syndrome and tendinitis, and prescribed limitations of no lifting over 20 pounds with no climbing or operating machinery. In a September 13, 2002 report, Dr. Mahesh I. Patel, Board-certified in internal medicine, indicated that appellant had been under his care for bilateral carpal tunnel syndrome, hypertension and arthritis since January 22, 2002.

[1] The physician's signature is illegible.

[2] The signature was difficult to read; however, it appears to be Dr. Nicoll's signature.

In a September 27, 2002 statement, appellant indicated that she started having mild shooting pains in her arms, elbows and hands in January 2002. She indicated that she would experience pain while she was fulfilling her duties as a letter carrier which included: sorting, casing, pulling down and rubber banding mail, and loading trays of mail on postal vehicles. Once she reached the route, appellant alleged that she was "fingering," walking and delivering mail for 40 hours or more a week. Appellant alleged that the pain would become so severe that she would drop items and that writing had also become painful. She also indicated that she had recently been diagnosed with arthritis which was not connected with the carpal tunnel.

By letter dated October 4, 2002, the employing establishment controverted the claim. Mary Carnevale, a human resources specialist, indicated that appellant was alleging that she first became aware of her illness on January 29, 2002; however, Ms. Carnevale noted that appellant did not work for approximately nine months, from August 11, 2001 to May 31, 2002.

In an October 15, 2002 report, Dr. Patel indicated that appellant's arthritis and carpal tunnel conditions were not related to each other. In an October 23, 2002 report, Dr. Nicoll reported that appellant was a letter carrier who cased mail for approximately two and a half hours a day, and that her carpal tunnel syndrome was first documented on September 12, 2002. He noted that she was seen on October 15, 2002 for continued pain and recommended surgery for both wrists.

On November 20, 2002 the Office received an employing establishment medical examination and assessment dated February 14, 1995 in which appellant was found to have no limitations or restrictions.

In a December 6, 2002 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant's claimed conditions were caused by factors of employment.

By letter dated March 28, 2003, appellant, through her attorney, requested reconsideration. In support of the request, appellant submitted a January 2, 2003 statement in which she confirmed that she did not work from June 2001 to June 2002. Appellant alleged that her problems with her shoulders developed during the June to September 2002 time frame and that the problems with her hands began long before January 29, 2002. Appellant alleged that the problems with her hands began soon after starting work for the employing establishment, but she did not realize that she had carpal tunnel. She repeated her arguments regarding her work duties and indicated that she did not engage in any activities outside of work from June 2001 to June 2002 or since September 2002 that would cause problems in her hands or shoulders.

Appellant submitted additional medical evidence including unsigned treatment notes from September 12 to December 19, 2002 and duplicates of previous reports. In a March 14, 2003 report, Dr. Nicoll advised that appellant was under his care for carpal tunnel syndrome to both wrists and impingement syndrome of both shoulders. He noted that appellant had worked for the employing establishment since 1995 and cased mail for approximately two and a half hours a day and then delivered it. He opined that each of these activities were repetitive and, over the course of time, could cause a person to develop carpal tunnel syndrome.

On April 4, 2003 Dr. Nicoll performed a carpal tunnel decompression of the left wrist. In a September 4, 2002 duty status report, received by the Office on April 9, 2003, a physician, whose signature was illegible, placed appellant on light duty and provided restrictions of no lifting, pulling or pushing greater than 5 to 10 pounds and no reaching above the shoulder. He also indicated that appellant could sort mail at the waist. In a June 3, 2003 medical leave report, Dr. Nicoll indicated that appellant had carpal tunnel syndrome of both hands, pain, weakness, loss of strength, numbness and was disabled.

By letters dated June 10 and 19, 2003, appellant's representative repeated his requests for reconsideration. On June 15, 2003 appellant filed a claim for an April 2, 2003 recurrence of her January 29, 2002 injury. On June 16, 2003 Dr. Nicoll performed a carpal tunnel decompression of the median nerve lysis to the right wrist.

By decision dated July 1, 2003, the Office denied appellant's reconsideration request without conducting a merit review on the grounds that the evidence submitted was duplicative and repetitious in nature and insufficient to warrant review of the prior decision.

The Office subsequently received duplicates of previous reports and unsigned treatment notes, and a December 30, 2002 report, in which Dr. Nicoll advised that appellant was under his care for impingement syndrome to both shoulders and carpal tunnel syndrome of both wrists. He opined that, according to the description of the type of work that appellant did as a letter carrier, it was his opinion that the impingement and carpal tunnel syndrome were a direct result of the motion and carrying appellant had done through the years.

By letter dated August 9, 2003, appellant's representative requested reconsideration. He repeated his argument that, according to the EMG dated January 29, 2002, appellant had a one-year history of progressive shooting pain on the right side, and that appellant worked until June 2001. He also noted that Dr. Nicoll's report should not be dismissed because the condition existed before appellant's absence from work.

By decision dated September 22, 2003, the Office denied appellant's reconsideration request without conducting a merit review on the grounds that the evidence submitted was immaterial and insufficient to warrant review of the prior decision. The Office noted that the Office in its previous decision dated July 1, 2003 erred when appellant was only afforded the right to review by the Employees' Compensation Appeals Board. The Office modified the prior decision to reflect that appellant also had the right to reconsideration from one year from December 6, 2002, the date of the last merit decision.

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.[3]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion 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 upon 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]

ANALYSIS -- ISSUE 1

In the instant case, appellant did not submit sufficient medical evidence to establish that her carpal tunnel and impingement syndrome conditions were caused by factors of her employment.[5] Appellant confirmed that she did not work from June 2001 to June 2002, but explained that the symptoms first appeared when she started working for the employing establishment, and she did not realize that they were caused by her employment until speaking with her representative in September 2002.

Appellant submitted an August 29, 2002 status report from an unknown physician and a September 18, 2002 report from Dr. Nicoll, which contained diagnoses of shoulder strain and impingement syndrome to the left wrist. Neither physician diagnosed carpal tunnel syndrome. Further, the doctors did not specifically relate the diagnosed conditions of shoulder strain or impingement syndrome to factors of appellant's federal employment. Medical evidence that does not offer any evidence or opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[6]

Appellant also submitted a January 29, 2002 EMG from Dr. Sclar who indicated that appellant had a one-year history of shooting pains, and who had last worked seven months previously. He indicated that his study revealed neuropathies in both wrists as found in carpal tunnel syndrome. However, he did not explain whether and how the identified factors of appellant's employment caused or contributed to her bilateral carpal tunnel syndrome. He also failed to explain why appellant's symptoms progressed during the time period when she did not perform any employment activities.

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[3] *Solomon Polen*, 51 ECAB 341 (2000); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] *Id.*

[5] The Office accepted that appellant was required to use her hands, arms, elbows and fingers to sort, case, pull down and rubber band mail, as well as load multiple trays of mail onto postal vehicles. The Office also accepted that she had to finger and deliver letters, magazines and parcels, and fill out information slips for special deliver, for 40 hours a week. However, the Office did not accept that appellant performed these activities between August 11, 2001 and May 31, 2002.

[6] *Linda I. Sprague*, 48 ECAB 386 (1997).

The reports from Drs. Nicoll and Patel dated September 12 and 13, October 15 and 23, 2002, contained diagnoses but did not discuss the cause of appellant's condition. As they did not address the cause of appellant's condition, these reports are of little probative value.[7]

Additionally, appellant provided an employing establishment assessment dated February 14, 1995, which noted that appellant did not have any restrictions. However, this report predated her alleged injury and was not relevant.

Since the medical evidence submitted does not establish a causal relationship between appellant's claimed condition and factors of her employment, appellant has not met her burden of proof in establishing her claim. In the absence of a rationalized medical opinion stating that appellant's condition was causally related to her employment, the Board finds that appellant is not entitled to compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act[8] vests the Office with discretionary authority to determine whether it will review an award for or against compensation.

> "The Secretary of Labor may review an award for or against compensation at any time or on his own motion or on application. The Secretary, in accordance with the facts found on review, may--
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> (1) end decrease or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[9]

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[10] The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[11] Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[12]

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[7] *Id.*

[8] 5 U.S.C. §§ 8101-8193.

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.608(a) (1999).

[11] 20 C.F.R. § 10.606(b)(1)-(2).

[12] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

The record contains new evidence submitted by appellant following the Office's December 6, 2002 decision. In the instant case, the Office denied appellant's March 28 and August 9, 2003 reconsideration requests on July 1 and September 22, 2003, respectively. After reviewing the evidence submitted in support of the requests, the Office determined that the additional factual and medical evidence submitted was insufficient to warrant merit review.

The Board initially notes that, with her requests for reconsideration, appellant submitted evidence previously of record. She also repeated that she did not work from June 2001 to June 2002. Although this time frame was slightly longer than originally indicated it is essentially the same information. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13] Appellant also submitted unsigned treatment notes. The Board has consistently held that unsigned treatment notes have little probative value.[14]

Appellant submitted several reports from Dr. Nicoll. In a March 14, 2003 report, he opined that appellant's work activities were repetitive and could cause a person to develop carpal tunnel syndrome. The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[15] The record also contains reports dated April 4, June 3 and 16, 2003, in which Dr. Nicoll discussed the procedures he performed and appellant's condition; however, they did not contain an explanation relating factors of appellant's employment to her condition.[16] In a December 30, 2002 report, Dr. Nicoll opined that the impingement and carpal tunnel were a direct result of the motion and carrying appellant had done through the years. However, he did not specifically discuss appellant's condition in relation to the nine months to one year that appellant did not work, or explain how this year off could cause appellant's condition.[17] Furthermore, the record contains several duty status reports; however, they did not address causal relation and are irrelevant and immaterial.

Therefore, appellant has failed to submit medical evidence relevant to the issue in the instant case of whether her carpal tunnel or impingement syndrome was causally related to her employment.[18] Appellant, thus has failed to show that the Office erred in interpreting the law

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[13] *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

[14] *See Merton J. Sills*, 39 ECAB 572 (1988).

[15] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[16] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician; *see Gary L. Fowler*, 45 ECAB 365 (1994).

[17] The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Michael E. Smith*, 50 ECAB 313 (1999); *Annie L. Billingsley*, 50 ECAB 210 (1998).

[18] *See Kevin M. Fatzer*, 51 ECAB 407, 412 (2000) (finding that a medical report containing a vague and unrationalized opinion on appellant's disability was insufficient to require reopening of appellant's case because it failed to address his physical condition at the relevant time).

and regulations governing her entitlement to compensation under the Act and has not advanced any relevant legal argument not previously considered by the Office. Likewise, she failed to submit relevant or pertinent new evidence not previously considered. Inasmuch as appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration requests.[19]

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty and furthermore, that the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 22 and July 1, 2003 and December 6, 2002 are hereby affirmed.

Issued: March 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[19] 20 C.F.R. § 10.606(b)(2).