



## **FACTUAL HISTORY**

On September 16, 2003 appellant, then a 36-year-old causal letter carrier, filed a claim for an occupational injury consisting of a strain of his hand and back which caused knots. He indicated that he first became aware that his condition was related to his employment on February 26, 2002 but he did not report the injury earlier because he was afraid he would be fired. The employing establishment indicated that appellant stopped working on April 29, 2002 and his employment was terminated on May 9, 2002 for an unsatisfactory record of service due to poor attendance.

In an October 7, 2003 letter, the Office informed appellant that the evidence he submitted was insufficient to establish that he sustained an injury in the performance of duty. Appellant was advised that he needed to submit an accurate description of the employment factors that he believed caused his hand and back condition, as well as medical evidence that showed any condition he had was caused by his federal employment. The Office noted that appellant's claim was vague as to what conditions of the hand or back he was claiming.

In an undated response, received by the Office on October 24, 2003, appellant stated that his job was to load and unload a two-ton truck and that he performed that duty every time he came to work. Appellant indicated that when he went to load the truck, he sustained a burning sensation in the hand and back as he lifted an item into the truck. On January 15, 2002 he felt a small knot on his right hand. Appellant had pain in his hand and back which became continuous.

In an October 30, 2003 letter, the employing establishment stated that appellant's assignment was to work mail collection routes, gathering mail from the collection boxes throughout the city delivery area. The task was to take tubs from the collection boxes and replace them. The tubs were then transferred into a two-ton vehicle for transportation to the general mail facility/processing plant. The employing establishment estimated that each tub received 50 to 100 pieces of mail daily and weighed an average of 5 pounds. The employing establishment stated that appellant was to immediately report any injury to his immediate supervisor. It indicated that appellant never reported an injury consisting of a burning sensation in the hand or back before his employment was terminated.

In a November 17, 2003 decision, the Office denied appellant's claim for compensation because there were inconsistencies in the nature of work as described by appellant and by the employing establishment. The Office pointed out that appellant did not provide any information on the weight of the objects handled, how often during a workday the activities would last or what was done with the objects handled while the employing establishment provided such information. The Office also indicated that appellant did not identify the employment factors that he believed were responsible for his condition and did not clarify what those conditions might be.

On December 5, 2003 appellant requested reconsideration. He submitted medical reports in support of his request. In a November 4, 2003 report, Dr. Bassam Albarcha, a Board-certified internist, indicated that appellant had a ganglion cyst on the right wrist. In a January 12, 2004 report, Dr. Albarcha related that appellant was seen on April 4, 2003 for a disability determination. Dr. Albarcha reported that appellant claimed he had an injury at work on January 15, 2002. He indicated that appellant had a small ganglion cyst on his right wrist which was causing some discomfort and a small lipoma on his back. Dr. Albracha noted that appellant claimed that all his complaints started after his injury.

In a February 12, 2004 report, Dr. Maurice Miller, an orthopedic surgeon, gave a history of lifting heavy objects at work and feeling a burning sensation in the right hand and wrist. He commented that appellant had no history of any systemic inflammatory joint disease and no history of surgery other than excision of some abscess many years before. Regarding appellant's examination findings, he stated that examination showed appellant had a ganglion cyst on the dorsoradial aspect of the right wrist and a large palpable mass on appellant's back near T4 which was either a lipoma or a large sebaceous inclusion cyst. Dr. Miller stated appellant's diagnosis as a ganglion cyst and a sebaceous inclusion cyst. Regarding causal relationship, Dr. Miller related that he explained to appellant that a lifting episode was not likely to have caused the appearance of the mass on his back.

In a March 12, 2004 merit decision, the Office denied appellant's request for modification of the November 17, 2003 decision because the evidence submitted was not sufficient to support that his current medical condition was due to employment factors.

On April 2, 2004 appellant requested reconsideration and submitted a copy of Dr. Miller's February 12, 2004 report. In an April 13, 2004 decision, the Office denied appellant's request for reconsideration because his request for reconsideration did not raise substantive legal question nor included new and relevant evidence.

### **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;<sup>1</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>2</sup> 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.<sup>3</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

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<sup>1</sup> See *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>2</sup> *Jerry D. Osterman*, 46 ECAB 500, 507 (1995); *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>3</sup> *George V. Lambert*, 44 ECAB 870, 876-77 (1993); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician's rationalized 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,<sup>4</sup> must be one of reasonable medical certainty<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant only reported one employment factor, lifting mail into a two-ton truck, as the cause of his ganglion cyst and the cyst on his back. Both appellant and the employing establishment indicated that appellant lifted tubs of mail into the truck when he was called to work. The employing establishment stated that the tubs, on average, weighed five pounds when appellant loaded them into the truck. Appellant stated that he first felt the burning sensation while lifting the tubs of mail. He gave two dates for the beginning of the burning pain in his right hand and back but since he filed a claim for an occupational injury rather than a traumatic injury, the date of the incident is less relevant than the history of repeatedly lifting tubs of mail into a truck. Appellant, therefore, has given a statement of the employment factor that he alleged caused his occupational injury which was corroborated by the employing establishment.

Appellant, however, has not submitted sufficient medical evidence to establish that the employment factor of lifting caused his ganglion cyst or the cyst on his back. Dr. Albarcha indicated that appellant had a ganglion cyst and a lipoma on his back but only noted that appellant claimed these conditions were causally related to his employment. Dr. Albarcha did not express his own opinion on the issue of causal relationship. Dr. Miller also noted that appellant claimed that the lifting he performed as part of his employment duties caused the ganglion cyst and the sebaceous inclusion cyst on his back. Dr. Miller indicated that he informed appellant that lifting would not have caused the sebaceous inclusion cyst on his back. He did not express any opinion on whether appellant's ganglion cyst was caused by appellant's lifting at work. Appellant has not submitted any medical evidence that would relate the cysts on his right wrist and back to factors of his employment. He therefore has not met his burden of proof in establishing that his claimed occupational injury was caused by employment factors.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the

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<sup>4</sup> *Durwood H. Nolin*, 46 ECAB 818, 821-22 (1995); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217-18 (1997); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *Arturo A. Adams*, 49 ECAB 421, 425-26 (1998).

merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

The Office properly denied appellant's request for reconsideration. The only evidence appellant submitted in support of his request was a copy of Dr. Miller's report which he had submitted previously and had been considered by the Office. The submission of Dr. Miller's report a second time was repetitive and therefore was insufficient to warrant a merit review of the Office's merit decisions. Appellant, therefore, did not meet the criteria set forth in section 10.608(b) that would require the Office to review the merits of his case.

### **CONCLUSION**

Appellant did not meet his burden of proof in establishing that he sustained an occupational injury due to factors of his employment. The Office properly denied appellant's request for reconsideration.

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<sup>7</sup> 20 C.F.R. 10.608(b).

<sup>8</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>9</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs, dated April 13 and March 12, 2004, and November 17, 2003, are affirmed.

Issued: November 22, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member