

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

THELMA A. DAVIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Capitol Heights, MD, Employer**

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**Docket No. 03-965
Issued: October 29, 2004**

Appearances:
Thelma A. Davis, pro se
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument October 20, 2004

DECISION AND ORDER

Before:

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

JURISDICTION

On March 7, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 13, 2002 which denied her claim that she sustained an upper extremity condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case. Appellant also filed a timely appeal from the Office nonmerit decision dated September 26, 2002 which denied her request for reconsideration. Pursuant to the same regulation, the Board has jurisdiction over this nonmerit decision.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an upper extremity condition in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 30, 2001 appellant, then a 52-year-old clerk, filed a claim alleging that she sustained tendinitis of both hands and wrists due to repeatedly lifting mail and mail trays at work. Appellant indicated that she first became aware of her condition on August 1, 2001 but she did not stop working for the employing establishment.¹

Appellant submitted a note in which Dr. Daniel H. Waterman, an attending Board-certified internist, provided the notation, “Refer to ortho[pedics] for tendinitis.”² She also submitted an October 16, 2000 report in which Dr. Waterman indicated that appellant exhibited tenderness in her hands consistent with tendinitis. Dr. Waterman noted that the condition commenced July 18, 2000 and had a “probable duration” of three months. He indicated that appellant had returned to regular work.

In a letter dated May 10, 2002, the Office requested that appellant submit additional factual and medical evidence in support of her claim, including a comprehensive medical report which contained a diagnosis and an opinion on the cause of her claimed condition supported by medical reasons.

By decision dated June 13, 2002, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an upper extremity condition in the performance of duty.

In a letter dated August 13, 2002, appellant indicated that she was requesting reconsideration of her claim. She stated: “I will be submitting medical evidence,” but she did not submit any additional medical evidence. By decision dated September 26, 2002, the Office refused to reopen appellant’s case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of 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.⁴ These are the essential

¹ Appellant stated that she performed these duties 40 hours per week. The employing establishment indicated that appellant had worked in the “automation operation” for one day prior to August 1, 2001.

² The date that the note was produced is unclear. It contains the handwritten notation “8/27” and a date stamp of October 5, 2001.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a 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, 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.⁶

ANALYSIS -- ISSUE 1

In the present case, appellant did not submit sufficient medical evidence to establish that she sustained an upper extremity condition in the performance of duty. In support of her claim, she submitted an October 16, 2000 report in which Dr. Waterman, an attending Board-certified internist, indicated that she exhibited tenderness in her hands consistent with tendinitis beginning July 18, 2000.⁷ However, Dr. Waterman did not provide any opinion on the cause of this apparent condition; he did not indicate that it was related to appellant's work duties. This report, therefore, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁸ Appellant also submitted a note in which Dr. Waterman provided the notation, "Refer to ortho[pedics] for tendinitis." He again failed to provide any opinion on the cause of appellant's apparent tendinitis condition.

⁵ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ He also stated that the condition had a "probable duration" of three months and that she had returned to regular work.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁹ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹²

ANALYSIS -- ISSUE 2

In the present case, appellant indicated in a letter dated August 13, 2002 that she was requesting reconsideration of her claim. She stated that she would be submitting medical evidence, but she did not submit any additional medical evidence. Nor did appellant submit any new legal argument in support of her claim. Therefore, the Office properly found that appellant's reconsideration request provided no basis to require reopening of her claim for review on the merits.

Appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its June 13, 2002 decision, under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an upper extremity condition in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. §§ 10.606(b)(2).

¹¹ 20 C.F.R. § 10.607(a).

¹² 20 C.F.R. § 10.608(b).

¹³ At the oral argument before the Board, appellant suggested that she had obtained additional medical evidence. She may wish to submit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. § 10.138.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26 and June 13, 2002 are affirmed.

Issued: October 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member