United States Department of Labor
Employees' Compensation Appeals Board

CATHERINE D. KERNEY, Appellant	)	
and	)	**Docket No. 04-1341**
	)	**Issued: October 8, 2004**
U.S. POSTAL SERVICE, MANAGEMENT SECTION CENTER, Baltimore, MD, Employer	)	

Appearances:
Catherine D. Kerney, 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 April 27, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 31, 2004, which affirmed the denial of her claim on the grounds that she failed to submit medical evidence establishing that she sustained an injury as alleged; and an April 16, 2004 decision, which denied request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this fact of injury case and over the denial of reconsideration.[1]

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury 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).

[1] Appellant submitted additional medical evidence with her appeal. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On June 2, 2003 appellant, a 47-year-old mail processor, filed an occupational disease claim alleging that her bilateral swelling and pain in her fingers and hands were due to the repetitive duties of her job. In an attached June 2, 2003 statement, appellant attributed her feet, bilateral hands, elbows, fingers and wrist condition, legs and sinus to her employment. The employing establishment controverted the claim.

On June 14, 2003 appellant submitted her resignation to the employing establishment stating that she was unable to continue working in her current position "due to multiple job-related injuries/illnesses" and she "can no longer suffer in pain."

By letter dated August 22, 2003, the Office advised appellant that additional information was necessary to make a determination of her claim. The Office noted the type of factual and medical evidence she needed to submit to establish her claim. No medical evidence was received.

By decision dated December 15, 2003, the Office found the evidence of record sufficient to establish the factors of employment as described by appellant. However, the Office found the medical evidence insufficient to establish that she sustained a condition caused by the accepted employment factors.

Appellant requested a review of the written record by an Office hearing representative on December 29, 2003.

In a decision dated March 31, 2004, an Office hearing representative affirmed the December 15, 2003 decision. The hearing representative found that the evidence of record was devoid of any medical evidence to establish that appellant sustained an injury as alleged.

In a letter dated April 10, 2004, appellant requested reconsideration, contending that she knew her injuries and disability were due to the repetitive nature of her employment duties. She submitted a description of the duties of an automated flat sorter clerk and an October 28, 2003 clinic note by Dr. Brian Joseph Krabak, a Board-certified physiatrist, who diagnosed "bilateral hand pain, possible secondary to carpal tunnel syndrome." A physical examination revealed a negative Tinel's sign at the wrist and elbow, normal range of motion, bilateral upper extremity reflexes were 2/4 and "sensory is intact to light touch in both upper extremities." He reported that the electrodiagnostic test revealed mild left carpal tunnel syndrome.

In a decision dated April 16, 2004, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the

[2] 5 U.S.C. §§ 8101-8193.

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.[3]

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 the 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.[4] 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 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 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.[5]

An award of compensation may not be based on surmise, conjecture or speculation or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of casual relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[6]

ANALYSIS -- ISSUE 1

The Office found that the record supported the employment factors identified by appellant. However, the evidence of record was insufficient to establish that she sustained an injury caused or aggravated by the employment factors identified by appellant as no medical evidence was submitted. While appellant submitted a brief factual statement setting forth allegations pertaining to a physical condition on her Form CA-2 and in an attached statement,

[3] *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Luis M. Villanueva*, 54 ECAB ___ (Docket No. 03-977, issued July 1, 2003); *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003); *Dennis M. Mascarenas, supra* note 4.

[6] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004); *Nicolette R. Kelstrom*, 54 ECAB ___ (Docket No. 03-275, issued May 14, 2003).

she did not submit any medical evidence providing a diagnosis of her condition or addressing whether she has a medical condition caused or aggravated by her federal employment. The Office provided appellant with opportunities to cure the deficiencies in the claim, but she failed to submit any medical evidence pertaining to her claim of injury prior to the December 15, 2003 decision or the March 31, 2004 decision by an Office hearing representative. Appellant, therefore, has failed to meet her burden of proof to establish a *prima facie* claim that she sustained an employment injury as a result of the implicated factors of her federal employment.

LEGAL PRECEDENT -- ISSUE 1

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[7] the Office's regulation provides that the 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) constituting relevant and pertinent new evidence not previously considered by the Office.[8] 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.[9] Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[11]

ANALYSIS -- ISSUE 2

In her letter requesting reconsideration, appellant alleged her injuries and disability were employment related and submitted medical evidence for consideration by the Office. Appellant 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), appellant submitted medical evidence from Dr. Krabak. In an October 28, 2003 clinic note, he diagnosed "bilateral hand pain, possible secondary to carpal tunnel syndrome." He reported a negative Tinel's sign at the wrist and elbow, normal range of motion, bilateral upper extremity reflexes were 2/4 and "sensory is intact to light touch in both upper extremities" based upon a physical examination. He diagnosed left mild carpal tunnel syndrome based upon electrodiagnostic

[7] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b).

[10] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[11] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

testing, but provided no opinion explaining how appellant's current disability was due to employment factors. The Office denied appellant's claim on the grounds that she failed to establish that she sustained a condition caused or aggravated by her employment. However, the relevant issue is whether appellant sustained an injury causally related to the identified employment factors. Dr. Krabak's opinion does not address the cause of appellant's condition. For this reason, this medical note is not relevant and is, therefore, insufficient to require that the Office reopen the case for review of the merits of appellant's claim. Therefore, appellant did not meet the requirements for reconsideration under 20 C.F.R. §§ 10.606(b)(1) and (2)(iii).[12] The Board finds that the report of Dr. Krabak is insufficient to require reopening appellant's case for further review on its merits.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty. The Board also 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).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 16 and March 31, 2004 are affirmed.

Issued: October 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[12] *See Claudio Vazquez*, 52 ECAB 496 (2001).