

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

DEBRA A. LEE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 04-1262
Issued: September 14, 2004**

Appearances:
Debra A. Lee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 13, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs nonmerit decision of July 31, 2003 which denied her request for reconsideration under 5 U.S.C. § 8128(a). Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the Office's July 31, 2003 decision. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Therefore, the Board does not have jurisdiction to consider the Office's merit decision dated June 24, 2002 denying modification of its finding that appellant had not established an employment-related occupational disease.

ISSUE

The issue is 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 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

FACTUAL HISTORY

On May 1, 1999 appellant, then a 38-year-old clerk, filed an occupational disease claim alleging that she sustained pain in her right arm and both hands due to factors of her federal employment. She became aware of her condition on January 1, 1997 and realized that it was caused or aggravated by her employment on April 28, 1999. Appellant did not stop work. The Office assigned the case File Number A02-0758023.

Appellant submitted electrodiagnostic testing dated May 19, 1999 which showed no evidence of carpal tunnel syndrome, entrapment neuropathy or peripheral neuropathy. In an unsigned report dated May 10, 1999, Dr. Thomas E. Helbig, a Board-certified orthopedic surgeon, discussed appellant's complaints of pain and swelling in her hands for the past two and a half years. He diagnosed possible bilateral carpal tunnel syndrome. In an unsigned report dated May 24, 1999, Dr. Helbig diagnosed chronic low back pain, right supraspinatus tendinitis and right hand pain of uncertain etiology. Dr. Helbig, in an unsigned progress note dated June 18, 1999, diagnosed low back pain, right supraspinatus tendinitis and "possible synovitis of the hands." On June 21, 1999 Dr. Helbig diagnosed "[s]ynovitis of the hands[,] etiology unclear."²

By decision dated August 17, 1999, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an employment-related condition.

On November 24, 1999 appellant filed an occupational disease claim alleging that she sustained pain in the left thumb, both wrists and the right arm and shoulder which she attributed to factors of her federal employment. Appellant became aware of her condition on May 1, 1999 and related it to her federal employment on November 3, 1999. The Office assigned the claim File Number A02-0769708.

On June 8, 2000 appellant, through her representative, requested reconsideration of the Office's August 17, 1999 decision. She also requested consolidation of her occupational disease claims.

Appellant submitted a report dated February 15, 2000 from Dr. Monica Mehta, a Board-certified physiatrist and her attending physician, who noted that appellant began experiencing pain while pitching mail at work. She further noted that appellant "was also involved in a taxicab accident on September 23, 1999 which aggravated the pain in her right shoulder." Dr. Mehta diagnosed "[c]ervical sprain, probable rheumatoid synovitis, probable cervical radiculopathy, probable brachial plexus neuritis, and probable carpal tunnel syndrome."

In a report dated April 10, 2000, Dr. Mehta diagnosed cervical radiculopathy due to pitching mail at work, reflex sympathetic dystrophy due to employment and lumbosacral radiculopathy of uncertain etiology. She opined that appellant's condition was due to her employment and not her September 1999 motor vehicle accident.

² In notes dated June 21 and 22, 1999, Dr. Isam Tadros, an osteopath, referred appellant for x-rays to rule out arthritis and to a rheumatologist.

Appellant submitted electrodiagnostic studies performed by Dr. Joel Meer, a Board-certified physiatrist, on August 9, 1999, which revealed findings “suspicious for radiculopathy around C6 level bilaterally.” She further submitted x-rays of her cervical spine, right shoulder and right thumb performed on June 30, 1999, and notes on a prescription pad from Dr. Helbig.

By decision dated August 21, 2000, the Office denied appellant’s November 24, 1999 occupational disease claim on the grounds that the medical evidence did not establish that she sustained a condition due to factors of her federal employment.

On August 29, 2000 appellant, through her representative, requested reconsideration of the Office’s August 2000 decision. She submitted a normal magnetic resonance imaging study (MRI) of her lumbar spine and an MRI of the cervical spine dated January 5, 2000 which revealed “minimal disc bulging at C4-5 and C5-6 mildly impressing on the anterior thecal sac at these levels.”

In a report dated June 16, 2000, Dr. Mehta noted that the electrodiagnostic studies performed on August 9, 1999 showed that appellant had cervical radiculopathy prior to her September 21, 1999 motor vehicle accident. She diagnosed lumbosacral radiculopathy preexisting appellant’s work injuries. Dr. Mehta further opined that appellant had reflex sympathetic dystrophy bilaterally and cervical radiculopathy due to “trauma sustained while at work.” She found that appellant was totally disabled.

In a decision dated October 19, 2000, the Office denied modification of its August 17, 1999 and August 1, 2000 decisions in Office File Numbers A02-0758023 and A02-0769708.³ The Office found that the medical evidence submitted lacked adequate rationale, failed to fully address her motor vehicle accident and did not indicate knowledge of her work duties. On October 20, 2000 the Office informed appellant that it was consolidating her claims into File Number A02-0758023.

On December 27, 2000 appellant, through her representative, requested reconsideration. Appellant submitted an undated report from Dr. Meer, who found that the electrodiagnostic studies performed on August 9, 1999 showed findings consistent with bilateral cervical radiculopathy at C5-6. He noted that appellant’s symptoms increased when pitching mail overhead and attributed her cervical radiculopathy to her “job of pitching mail at the [employing establishment].”

In a decision dated March 26, 2001, the Office denied modification of its prior decision.

On March 25, 2002 appellant requested reconsideration. Appellant argued that she did not have cervical radiculopathy but instead had reflex sympathetic dystrophy (RSD). She noted that a review of all the reports of record supported that she had complaints consistent with RSD. Appellant submitted clinic notes from the employing establishment dated April 30 to May 25, 1999, progress notes dated May 10 to June 2, 1999 and an MRI scan of the upper extremities dated November 16, 2000.

³ The Office stated that it was denying modification of its August 1, 2000 decision rather than its August 21, 2000 decision; however, it is apparent that this is a typographical error.

By decision dated June 24, 2002, the Office denied modification of the March 26, 2001 decision. The Office noted that it had previously determined that appellant did not have any medical condition due to her employment, including RSD, and that none of the medical evidence submitted on reconsideration was sufficient to support modification of its prior determination that she had not met her burden of proof to establish her occupational disease claim.

By letter dated June 20, 2003, appellant again requested reconsideration and described an expert's explanation of RSD as a disease with many symptoms. She quoted excerpts from articles about RSD. Appellant asserted that Dr. Helbig's findings that she had synovitis of the hands of unclear etiology corresponded to a description of RSD in articles by experts. She further noted that Dr. Mehta's June 16, 2000 report attributed her lumbosacral radiculopathy to repetitive work. Appellant also noted that Dr. Mehta referenced Dr. Helbig's May 24, 1999 report in which he described her chronic complaints of right shoulder, upper arm and low back pain and that Dr. Mehta diagnosed RSD due to "the repetitive stress injury." Appellant additionally contended that her cervical MRI scan, which revealed mild degenerative changes, supported a diagnosis of RSD according to an article. She further maintained that Dr. Helbig's June 21, 1999 diagnosis of chronic myalgia supported the diagnosis of lumbosacral radiculopathy by Dr. Mehta. Appellant further stated that her symptoms began prior to her motor vehicle accident in September 1999.

In a decision dated July 31, 2003, the Office denied reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant review of the case on its merits. The Office noted that appellant had not submitted any medical evidence in support of her request for reconsideration.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that a 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 arguments not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁵ 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.⁶

ANALYSIS

In her letter requesting reconsideration, appellant asserted that a review of articles from experts on RSD supported her diagnosis. However, excerpts from articles are of no evidentiary value in establishing the necessary causal relationship between appellant's claimed condition and

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by appellant.⁷

Appellant further reviewed and interpreted the medical evidence of record and argued that it supported that she had RSD due to her employment. However, the Office previously considered appellant's argument that she sustained RSD rather than cervical radiculopathy due to her employment. The Board has held that the submission of argument or evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸ Moreover, while appellant summarized the medical evidence which she believed favorable to her claim, the issue to be resolved is whether she sustained an occupational disease due to factors of her federal employment. As the current issue is medical in nature, it can only be resolved through the submission of relevant medical evidence.⁹

As appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered or submitted relevant and pertinent new evidence, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board 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).

⁷ See *William C. Bush*, 40 ECAB 1075 (1989).

⁸ *David J. McDonald*, 50 ECAB 185 (1998).

⁹ Lay persons are not competent to render a medical opinion; see *James A. Long*, 40 ECAB 538 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 31, 2003 is affirmed.

Issued: September 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member