

FACTUAL HISTORY

On March 13, 2003 appellant, then a 52-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained a right arm injury as a result of gripping mail. Dr. Cynthia Crawford-Green, appellant's attending internist, diagnosed likely carpal tunnel syndrome and indicated that appellant should not work for a couple of weeks. In a report dated May 1, 2003, Dr. Crawford-Green diagnosed carpal tunnel syndrome causally related to repetitive lifting and fine manipulation at work. In reports dated April 8 and June 17, 2003, Dr. Crawford-Green indicated that appellant should remain off work.

The Office accepted the claim for right carpal tunnel syndrome on June 23, 2003. Appellant submitted a claim for compensation (Form CA-7) on August 29, 2003 for the period March 14 to September 5, 2003. In reports dated April 8 and June 17, 2003, Dr. Crawford-Green stated that appellant should remain off work. By report dated September 8, 2003, Dr. Crawford-Green stated that she doubted whether appellant would be able to return to her former job and that she hoped an alternative position could be found.

In a duty status report (Form CA-17), dated September 29, 2003, Dr. Crawford-Green stated that appellant was totally disabled from work. On October 27, 2003 appellant filed a Form CA-7 for the period September 6 to October 31, 2003.

By decision dated November 20, 2003, the Office denied appellant's claim for compensation from March 14 to September 5, 2003. The Office found that appellant did not provide a rationalized medical report on disability.

On December 4, 2003 appellant submitted a November 26, 2003 Form CA-17 from Dr. Crawford-Green, who indicated that appellant could return to work with restrictions. Dr. Crawford-Green indicated that appellant was restricted from lifting but could use her left hand to answer telephones.

In a report dated November 26, 2003, Dr. Crawford-Green indicated that she had reviewed a copy of the November 20, 2003 decision. She stated:

“[Appellant] has carpal tunnel syndrome with right arm weakness and pain. She is obviously a right-handed employee and, based on her job duties, it is impossible, as one of the notes suggests, that she can do her work with her left hand. She is not ambidextrous. Many of the tasks for which she is assigned require not one, but two hands to adequately and safely perform her duties. She had undergone physical therapy as well as medical therapy. When the physical therapy is discontinued after a couple of weeks, the pain returns as well as the weakness.

“It is my medical opinion that she is unable to return to her mail handler duties based on the neurological damage which she sustained from injuries on her job with the [employing establishment].”

Appellant underwent right carpal tunnel surgery on April 27, 2004. She began receiving compensation for temporary total disability. On July 9, 2004 she requested reconsideration of the November 20, 2003 decision.

By decision dated October 8, 2004, the Office determined the reconsideration request was insufficient to warrant merit review of the claim. In a decision dated January 10, 2005, the Office denied appellant's compensation for wage loss from September 6, 2003 to January 28, 2004. The Office stated that appellant had not responded to requests for medical evidence. The Office did not discuss specific medical reports in either decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim, including that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

A final decision of the Office with respect to a claim for compensation shall contain findings of fact and a statement of reasons.³ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."⁴ These requirements are supported by Board precedent.⁵

ANALYSIS -- ISSUE 1

In the present case, the Office denied appellant compensation for the period September 6, 2003 to January 28, 2004, without discussing the medical evidence. The Office did not acknowledge that appellant submitted medical evidence with respect to this period. For example, the November 26, 2003 report from Dr. Crawford-Green addressed that appellant could not work in her date-of-injury job because she could not perform work with her left arm only. The November 26, 2003 Form CA-17 indicated that appellant could not work her regular job and could only work with restrictions. The Office failed to address the medical evidence of record and make proper findings with respect to the claim for compensation. The case will accordingly be remanded to the Office. After such further development as is deemed necessary, it should issue an appropriate decision.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ 20 C.F.R. § 10.126 (1999).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

⁵ *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

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:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new 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.

ANALYSIS -- ISSUE 2

The November 20, 2003 merit decision addressed the period March 14 to September 5, 2003. As noted above, appellant submitted a November 26, 2003 report from Dr. Crawford-Green that addresses the issue of disability for work. Dr. Crawford-Green noted that she had reviewed the November 20, 2003 decision and she opined that appellant was disabled for work. This evidence was new and relevant evidence with respect to the issue in the November 20, 2003 decision. Appellant submitted relevant and pertinent evidence not previously considered by the Office, and under 20 C.F.R. § 10.606(b)(2) she is entitled to a merit review of the claim. The case will therefore be remanded to the Office for a merit decision with respect to disability from March 14 to September 5, 2003.

CONCLUSION

The Board finds that the Office failed to properly consider the relevant evidence on the issue of disability from September 6, 2003 to January 28, 2004. With respect to disability from March 14 to September 5, 2003, appellant submitted sufficient evidence to require a merit decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 10, 2005 and October 8, 2004 are set aside and the case remanded for further actions consistent with this decision of the Board.

Issued: December 16, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board