

March 10, 2003 that her claimed condition was employment related. Appellant did not stop working for the employing establishment.

Appellant submitted an October 2, 2003 note in which a nurse practitioner indicated that she had bilateral carpal tunnel syndrome.¹

In a letter dated February 20, 2004, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a detailed job description and a March 1, 2004 statement in which an employing establishment official stated that she spent 60 to 70 percent of the day working on a computer keyboard. She also submitted several notes, dated between May 2002 and March 2004, in which nurse practitioners and physical therapists discussed her bilateral upper extremity problems.

By decision dated April 9, 2004, the Office denied appellant's claim that she sustained a bilateral upper extremity condition in the performance of duty. The Office accepted that appellant established the existence of employment factors in the form of engaging in repetitive upper extremity motion for much of her workday. However, it found that she did not submit sufficient medical evidence to establish that she sustained a condition due to these factors.

In May 2004 appellant requested reconsideration of her claim and submitted several notes signed by attending nurse practitioners and physical therapists, which had previously been received by the Office.

By decision dated July 16, 2004, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

¹ The note was prepared on the letterhead of Dr. Lars A. Stangebye, a Board-certified family practitioner, but the note was not signed by Dr. Stangebye.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.⁵

ANALYSIS -- ISSUE 1

Appellant has established the existence of employment factors in the form of engaging in repetitive upper extremity motion, but she did submit sufficient medical evidence to establish that she sustained a condition due to these factors.

Appellant submitted several notes, dated between May 2002 and March 2004, in which nurse practitioners and physical therapists discussed her bilateral upper extremity problems. However, neither a nurse nor a physical therapist is a "physician" as defined under the Act and cannot render a medical opinion on the causal relationship between a given physical condition and implicated employment factors.⁶ The record does not contain any rationalized medical report from a physician relating a diagnosed upper extremity condition to the accepted employment factors and the Office properly denied appellant's occupational disease claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ 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.⁸ To be entitled to a merit

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ See 5 U.S.C. § 8101(2); *Bertha L. Arnold*, 38 ECAB 282, 285 (1986); *Jane A. White*, 34 ECAB 515, 518-19 (1983).

⁷ 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).

⁸ 20 C.F.R. § 10.606(b)(2).

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 2

In support of her timely May 2004 reconsideration request, appellant submitted several notes signed by attending nurse practitioners and physical therapists, which had previously been received and considered by the Office. However, the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹

Appellant has not established that the Office improperly denied her request for reconsideration of its April 9, 2004 decision, because the evidence she submitted 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 constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

⁹ 20 C.F.R. § 10.607(a).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 16 and April 9, 2004 decisions are affirmed.

Issued: July 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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