United States Department of Labor
Employees' Compensation Appeals Board

CHERYL L. O'ROURKE, Appellant	)	
and	)	**Docket No. 05-791**
	)	**Issued: June 20, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Muskogee, OK, Employer	)	

Appearances:
Cheryl L. O'Rourke, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 17, 2005 appellant timely filed an appeal from an October 28, 2004 merit decision by the Office of Workers' Compensation Programs which denied modification of a July 7, 2004 decision, which denied her claim for bilateral carpal tunnel syndrome. She also seeks review of a December 6, 2004 decision which denied her request for reconsideration. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3. The Office also denied merit review of the claim on December 6, 2004.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that her bilateral carpal tunnel syndrome was causally related to her employment; and (2) whether the Office properly denied appellant's request for review of the merits of the claim.

FACTUAL HISTORY

On May 24, 2004 appellant, then a 56-year-old medical clerk, filed a claim for bilateral carpal tunnel syndrome. She related her condition to typing duties, signatures, telephone calls, and computer entries, all of which increased the pain in her wrists. Appellant noted that she had fallen on the employing establishment steps in October 2002, but broke the fall with both hands. She did not have symptoms at that time except for bruising, scraping and some weakness.

In a June 7, 2004 letter, the Office informed appellant of the factual and medical information she needed to submit in support of her claim. She was given 30 days to submit the evidence requested.

In a June 25, 2004 letter, appellant stated that she had been working at the employing establishment for 25 years when she began working for the Short Stay Surgery Department. She performed considerable typing on the computer, making hard charts for surgeries, packets for admission, minor surgeries, follow ups and add-ons. She typed 150 words a minute. Appellant commented that there was more work than she could do in a day. She also scanned charts into the computer for three hours a day. She had to schedule approximately 1,000 consultations a month, approximately 75 a day plus approximately 25 follow-up appointments a day. Appellant related that, in October 2002, she fell while walking up the hospital steps, braking her fall with her hands. In the spring of 2003, appellant noticed her hands falling asleep at night. She experienced weakness in her hands with increasing burning and pain.

Appellant submitted an October 24, 2003 from Dr. James D. Harris, an osteopath, who conducted an electromyogram (EMG) on both arms. Dr. Harris reported that appellant had bilateral slowing of the median nerve at the wrist, consistent with a diagnosis of carpal tunnel syndrome. He noted that appellant had a history of degenerative joint disease of the cervical spine. Dr. Harris stated that "this all" began when appellant fell at work on October 18, 2002.

In a November 20, 2003 report, Dr. Fred M. Ruefer stated that appellant had bilateral carpal tunnel syndrome, with positive Tinel's signs bilaterally and a Phalen's sign on the right at 15 seconds and on the left after more than 30 seconds. He recommended carpal tunnel release surgery.

In a July 7, 2004 decision, the Office denied appellant's claim because she had not established that the events occurred as she alleged and, furthermore, had not submitted medical evidence that provided a diagnosis which could be connected to the claimed event.

On July 12, 2004 the Office received a memorandum from Dr. Thomas A. Ward, the employing establishment's Chief of Surgery Service. Dr. Ward noted that appellant's position required typing for a majority of the workday, but that the typing required in this position was equal to or less than other employees in this service.

Appellant requested reconsideration. She submitted a description of her work duties, which including formatting and interpreting the treatment and tests ordered by physicians, answering the telephone, making telephone calls to relay information, make appointments for patients, making eligibility determinations and other general office work. Appellant resubmitted

the reports from Dr. Harris and Dr. Ruefer. She also submitted a July 13, 2004 note from Dr. Ruefer who stated that appellant had a full range of motion and no pain but some numbness in the hands. He released appellant to full duty.

In an October 28, 2004 merit decision, the Office denied modification of the July 7, 2004 decision. Appellant again requested reconsideration. In a December 6, 2004 decision, the Office denied appellant's request for reconsideration on the grounds that she had not submitted any new medical evidence or advanced substantive legal arguments as part of her request.

LEGAL PRECEDENT -- ISSUE 1

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;[1] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[2] 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.[3] The medical evidence required to establish 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,[4] must be one of reasonable medical certainty[5] 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

Appellant established through her own statement and through her job description that she fell on October 18, 2002 and that she had a history of duties that required repetitive motion to perform her myriad duties. Dr. Ward, the Chief of Surgery Service at the employing establishment, did not dispute appellant's description of her fall on October 18, 2002 or her job duties and in fact noted that her position did require typing for most of the workday. He added however that the amount of typing required by appellant's position was equal to or less than other employees. The Board has long held that the Federal Employees' Compensation Act does

[1] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[2] *Jerry D. Osterman*, 46 ECAB 500, 507 (1995); *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[3] *George V. Lambert*, 44 ECAB 870, 876-77 (1993); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] *Durwood H. Nolin*, 46 ECAB 818, 821-22 (1995); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *Dennis M. Mascarenas*, 49 ECAB 215, 217-18 (1997); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *Arturo A. Adams*, 49 ECAB 421, 425-26 (1998).

not require a showing of unusual exertion or stress in the employment as a prerequisite for compensability. The claim is compensable if it is established that the performance of regular duties did in fact precipitate or cause the injury claimed.[7] Appellant has established the alleged factors of employment.

The medical evidence of record establishes that Dr. Harris and Dr. Ruefer diagnosed bilateral carpal tunnel syndrome. The only history of injury provided is a note by Dr. Harris that "all this" began when appellant fell on October 18, 2002. There is no explanation provided in any of the medical reports of how the fall or the repetitive duties appellant performed on a daily basis caused or contributed to her diagnosed bilateral carpal tunnel condition. Neither physician addressed the issue of whether appellant's fall at work or her repetitive motions caused her bilateral carpal tunnel condition. The physicians did not provide any explanation on how appellant's duties requiring constant use of her hands would cause carpal tunnel syndrome. The evidence of record provides no rationalized medical opinion explaining how her factors of employment contributed to her current diagnosed condition. Appellant has, therefore, failed to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides 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 argument not previously considered by the Office; or (3) submitting 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]

ANALYSIS -- ISSUE 2

On November 23, 2004 appellant submitted a second request for reconsideration. Appellant noted on the reconsideration request form that her orthopedic surgeon had completed a letter and that other documents would be provided. No other evidence was however received by the Office. As appellant failed to 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, her request for reconsideration was properly denied.

[7] *John J. Gallagher*, 35 ECAB 1128 (1984).

[8] 20 C.F.R. § 10.606(b) (2) (1999).

[9] *Id*. at § 10.608(b) (1999).

CONCLUSION

Appellant has not met her burden of proof in establishing that she had carpal tunnel syndrome causally related to her duties at work. The Office also properly denied appellant's November 23, 2004 request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated December 6, October 28 and July 7, 2004 be affirmed.

Issued: June 20, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member