

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

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**JOHN G. MEAD, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Springfield, MO, Employer**

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**Docket No. 05-1692  
Issued: November 1, 2005**

*Appearances:*  
*John G. Mead, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 4, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 2, 2005 merit decision, denying his claim for an employment-related cervical disc herniation and a July 11, 2005 decision, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these merit and nonmerit decisions.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an employment-related cervical disc herniation; and (2) whether the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On December 6, 2003 appellant, then a 50-year-old mail processor, filed an occupational disease claim alleging that he sustained a herniated disc at C6-7, due the repetitive duties of his

job. His work consisted of sweeping and sorting mail and lifting mail trays weighing up to 40 pounds on almost constant basis throughout the workday.<sup>1</sup>

By letter dated December 29, 2003, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted a January 25, 2004 statement which provided further description of his work duties. In a September 30, 2003 report, Dr. Sunghoon Lee, an attending Board-certified neurosurgeon, indicated that appellant reported experiencing left arm numbness and a pins-and-needles sensation without any severe pain in April 2003. He noted that appellant reported that the pain was worse when extended.<sup>2</sup> Dr. Lee stated that magnetic resonance imaging (MRI) scans showed a herniated nucleus pulposus at C6-7, with a very slight suggestion of signal change in the spinal cord and moderate foraminal stenosis at the C7 foramen on the left.<sup>3</sup>

On December 17, 2003 Dr. Lee performed an anterior cervical discectomy at C6-7, placement of an interbody fusion device with allograft and anterior cervical fixation with a cervical plate.

By decision dated February 2, 2004, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related cervical disc herniation.

In a September 20, 2004 report, Dr. Lee indicated that appellant continued to have paresthesias down into his left forearm and hand. He stated that electromyogram (EMG) testing showed ulnar nerve compression at the left elbow and bilateral carpal tunnel syndrome, worse on the left and referred him to Dr. Allan Scarrow, a Board-certified orthopedic surgeon.<sup>4</sup>

By decision dated February 2, 2005, the Office affirmed its February 2, 2004 decision. It indicated that appellant might wish to file a new compensation claim if he felt that his ulnar and median nerve problems were related to employment factors.

Appellant submitted numerous medical reports which had been considered by the Office. He also submitted a March 9, 2005 report in which Dr. Scarrow indicated that he performed a

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<sup>1</sup> Appellant stopped work on December 16, 2003, returned to light-duty work in January 2004 and returned to regular duty in April 2004. The file number for the present claim is 112019525.

<sup>2</sup> The record also contains an August 11, 2003 report, in which Dr. Lee provided a similar account of appellant's complaints.

<sup>3</sup> The record contains the results of the August 20, 2003 MRI scan showing a herniated nucleus pulposus at C6-7. In a report dated September 26, 2003, Dr. Dalia G. Miller, an attending Board-certified neurosurgeon, indicated that appellant denied any trauma to his neck and noted that diagnostic testing showed a C6-7 herniation. The record also contains an MRI scan from August 2004 which shows degenerative processes at C4-5 and C5-6 and an absence of a disc protrusion at C6-7.

<sup>4</sup> The record contains the results of August 30, 2004 EMG testing showing ulnar nerve compression at the left elbow and bilateral transcarpal median nerve neuropathies. In a report dated September 20, 2004, Dr. Scarrow detailed his examination of appellant and stated that he had left ulnar and median nerve neuropathies.

left carpal tunnel release in November 2004. He posited that it was reasonable to believe that appellant's carpal tunnel syndrome was related to lifting and other repetitive wrist and hand movements he performed at work.<sup>5</sup>

On March 23, 2005 appellant requested reconsideration of his claim. In a letter dated March 27, 2005, he addressed his work duties and the reports of Dr. Lee. Appellant indicated that he was enclosing a February 14, 2005 report of Dr. Lee, but no such report was enclosed.

By decision dated July 11, 2005, the Office denied appellant's request for merit review. It noted that Dr. Scarrow's March 9, 2005 report concerning his carpal tunnel syndrome was not relevant to the present claim as his carpal tunnel condition was developed under a different Office claim.<sup>6</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of his 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.<sup>8</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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.<sup>9</sup>

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<sup>5</sup> The record contains documents which show that appellant filed an occupational disease claim, signed on January 31, 2005 claiming that he sustained bilateral carpal tunnel syndrome and left ulnar nerve compression due to the repetitive duties of his job. The file number for this claim is 112027371. The Office developed this claim separately from the current claim and appellant's claim for employment-related ulnar and median nerve conditions is not the subject of this appeal.

<sup>6</sup> The Office indicated that it had been accepted that appellant had carpal tunnel syndrome under claim number 112027371.

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

## **ANALYSIS -- ISSUE 1**

Appellant alleged that he sustained a herniated disc at C6-7 due to the repetitive duties of his job, including sweeping and sorting mail and lifting mail trays weighing up to 40 pounds throughout the workday. By decisions dated February 2, 2004 and February 2, 2005, the Office denied his claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained such an employment-related condition.

The record contains a number of reports in which Dr. Lee, an attending Board-certified neurosurgeon, and Dr. Miller, an attending Board-certified neurosurgeon, indicated that appellant had a herniated nucleus pulposus at C6-7. In some of these reports, it was noted that he complained of experiencing left arm numbness and a pins-and-needles sensation since the spring of 2003 and that these symptoms were worse when his left arm was elevated. The record contains the results of an August 20, 2003 MRI scan showing a herniated nucleus pulposus at C6-7 and on December 17, 2003 Dr. Lee performed an anterior cervical discectomy at C6-7, placement of an interbody fusion device with preprepared allograft and anterior cervical fixation with a cervical plate.

Although the record clearly establishes that had appellant had a herniated nucleus pulposus at C6-7, he failed to submit medical evidence showing that this condition was related to his repetitive work duties as alleged. Neither Dr. Lee nor Dr. Miller provided any opinion on the cause of his cervical condition.<sup>10</sup> Appellant has not submitted a rationalized medical report showing that he sustained a herniated nucleus pulposus at C6-7 and the Office properly denied his claim.

## **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>11</sup> the Office's regulations provides 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.<sup>12</sup> To be entitled to a merit 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.<sup>13</sup> When a claimant

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<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>11</sup> 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).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2).

<sup>13</sup> 20 C.F.R. § 10.607(a).

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.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

In support of his March 2005 reconsideration request, appellant submitted numerous medical reports which had previously been submitted 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.<sup>15</sup> Appellant also submitted a March 9, 2005 report in which Dr. Scarrow, an attending Board-certified orthopedic surgeon, discussed his carpal tunnel syndrome condition. The Office properly found that this report was not relevant to the main issue of the present case because appellant's carpal tunnel condition was developed under a different Office claim. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>16</sup>

Appellant has not established that the Office improperly denied his request for further review of the merits of its February 2, 2005 decision under section 8128(a) of the Act, because the evidence he 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.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related cervical disc herniation. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>14</sup> 20 C.F.R. § 10.608(b).

<sup>15</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>16</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). Appellant did not submit any new argument but rather merely indicated that he felt his claim had been established. He stated that he was enclosing a February 14, 2005 report of Dr. Lee with his reconsideration request but no such report was enclosed.

<sup>17</sup> Appellant submitted additional medical evidence upon appeal to the Board, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. §§ 10.605 to 10.607.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 11 and February 2, 2005 decisions are affirmed.

Issued: November 1, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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