

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

JEANA L. LARGIN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 06-61
Issued: July 13, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 October 4, 2005 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs' hearing representative dated November 8, 2004 which denied her claim for compensation, and a May 5, 2005 decision which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant met her burden to establish that her right carpal tunnel syndrome was causally related to factors of her federal employment in January 2003; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 6, 2003 appellant, then a 33-year-old clerk, filed an occupational disease claim alleging that, when she returned to work in January 2003, she had restrictions on using her

left hand which caused her to overutilize her right hand. She experienced severe pain in her right wrist, elbow, arm, shoulder and neck. Appellant contended that she was required to lift sacks of mail of various weights five hours a day for five days a week. The employing establishment controverted her claim, noting that she returned to a limited-duty assignment for five hours a day for eight days and then filed a claim.¹

By letter dated October 15, 2003, the Office requested that appellant submit further information. She submitted a September 23, 2003 report from Dr. Mark A.P. Filippone, a Board-certified physiatrist. He indicated that he last saw appellant on September 10, 2003 and that she continued to be disabled. In an October 15, 2003 medical report, he noted that he first examined her on February 12, 2003 for injuries she sustained at the employing establishment on July 25, 2002 and that appellant had a left carpal tunnel surgical release on September 25, 2002. She continued to have bilateral cervical paraspinal pain, a positive Phalen's sign bilaterally and a bilateral positive Tinel's sign over the ulnar nerve at the elbow and median nerve at the wrist. Dr. Filippone stated that she continued to be totally disabled and that these abnormalities were "directly and solely the result of the injuries sustained on July 25, 2002" when lifting sacks of mail. Appellant also submitted medical form reports in which the physician diagnosed carpal tunnel syndrome. He checked a box indicating that this condition was related to her employment, but did not provide any explanation addressing causal relation. In a November 13, 2003 report, Dr. Filippone indicated that appellant remained symptomatic.

In a letter dated October 24, 2003, appellant indicated that, when she returned to work, she was only able to lift with her right hand and that she felt pain in her right hand after several days of lifting mail. She noted that the sacks she lifted weighed from 1 to 35 kilograms. Appellant stated that she worked with a coworker lifting the mail sacks off a cart, weighing them and recording information. Her coworker had a plan wherein he lifted and she input information, but that this was not effective as her coworker would have to move to another position at various times during the day. Appellant added that her supervisor told her that she was not meeting her quota.

By decision dated December 18, 2003, the Office denied appellant's claim as she had not submitted sufficient medical evidence to establish the employment factors for the eight days she worked in January 2003 caused her right wrist condition.

By letter dated January 12, 2004, appellant requested a hearing. She submitted a February 12, 2003 report from Dr. Filippone who indicated that appellant had left carpal tunnel syndrome for which she was status post left carpal tunnel surgical release. Appellant returned to limited duty on January 4, 2003 during which time she lifted sacks with her right hand. Dr. Filippone stated that the "tingling in the left hand worsened and she has not been able to work since January 21, 2003." Dr. Filippone concluded that appellant was totally disabled as of January 21, 2003 "due to her injuries."

A hearing was held on August 30, 2004. Appellant described her employment duties. She started experiencing pain while lifting boxes and packages in September 2002 and had left

¹ The employing establishment contended that appellant's limited-duty assignment consisted of no pulling, pushing or lifting over five pounds.

carpal tunnel release surgery on September 25, 2002. Appellant returned to work in January 2003 and, due to limitations on the use of her left hand, she used her right hand and experienced pain on her right side. She described lifting sacks that weighed up to 75 pounds, sometimes without assistance. In January 2003, she started having problems with both hands, wrists, arms and her neck. Appellant filed her present claim for a herniated cervical disc and right carpal tunnel syndrome.

By letter dated September 30, 2004, the employing establishment stated that appellant only worked intermittently in a limited-duty assignment in January 2003. Her duties involved no lifting, pushing or pulling over five pounds and curtailed her schedule to five hours a day. On October 18, 2004 appellant responded that her job duties in January 2003 put great strain on her right extremity and neck, in addition to her left extremity.

In a December 18, 2003 report, Dr. Walter M. Flax, a consultant in occupational orthopedic medicine, discussed appellant's work-related left carpal tunnel syndrome and noted that her neck complaints were not related to the work injury of July 25, 2003. The evidence also includes a note from Dr. Richard A. Boiardo indicating that appellant could return to work light duty on January 4, 2003.

By decision dated November 8, 2004, the Office hearing representative found that appellant had not established that she performed heavy lifting when she returned to limited-duty work in January 2003. The hearing representative further found that the medical evidence did not establish that appellant sustained an injury causally related to her employment and affirmed the Office's December 18, 2003 decision, as modified.

On March 9, 2005 appellant filed a request for reconsideration. She noted that she was submitting a November 3, 2004 report from Dr. Filippone, but no such report is of record.

By decision dated May 25, 2005, the Office noted that no new report by Dr. Filippone was submitted. Accordingly, the Office found the evidence insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or 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 claim are causally related to the employment injury.³ These are the

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 150 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵

ANALYSIS -- ISSUE 1

Appellant's claim was denied because she failed to establish employment factors that caused or contributed to her condition. She alleged that after her return to limited duty in January 2003 she lifted sacks weighing as much as 75 pounds, occasionally without help. However, the employing establishment controverted her claim, noting that appellant was limited to lifting, pushing or pulling five pounds. The employing establishment noted that she only worked eight days of limited duty prior to filing the claim.

Appellant has the burden of proof to establish the work conditions giving rise to her claim. The employing establishment stated that appellant was not required to lift heavy mail sacks with her right hand. Appellant noted that she had no restrictions on lifting with her right hand. The Board finds that appellant has not submitted sufficient evidence to establish her allegation that she was required to lift heavy mail sacks or containers following her return to limited duty in January 2003. Appellant did not submit any statements from coworkers or her supervisor to support her allegations that she performed the heavy lifting that she alleged upon her return to work. Accordingly, as the employment factor of heavy lifting has not been established, it is not necessary to review the medical evidence to determine whether appellant sustained an injury resulting from the implicated employment factors. The Board finds, therefore, that the Office properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act (5 U.S.C. § 8128(a)), the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 265 (1999).

⁶ 20 C.F.R. § 10.606(b)(2)(i-iii).

ANALYSIS -- ISSUE 2

Appellant does not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office. Furthermore, she has not submitted any evidence on reconsideration. Although appellant stated that she submitted a new medical report from Dr. Filippone, no such report is of record. She did not submit any new evidence with regard to the reason her claim was denied, *i.e.*, she did not submit evidence that established that she performed heavy lifting after her return to limited duty in January 2003. Accordingly, the Office properly denied appellant's request for reconsideration without reviewing the case on the merits.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right carpal tunnel syndrome was causally related to factors of his federal employment in January 2003. The Board further finds that the Office properly denied her request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 5, 2005 and the Office hearing representative's November 8, 2004 decision are affirmed.

Issued: July 13, 2006
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