

In an August 20, 2004 report, Dr. C.M. Schade, a Board-certified anesthesiologist and treating physician, diagnosed bilateral carpal tunnel syndrome and advised that appellant could return to work on August 26, 2004. She prescribed restrictions, which included no continuous pushing or pulling over 50 pounds and no intermittent pushing or pulling over 60 pounds. Appellant advised that she could do simple grasping for no more than three hours a day and intermittent reaching above the shoulder with no more than 45 pounds.

By letter dated October 19, 2004, the employing establishment offered appellant a modified letter carrier assignment within her medical restrictions. The modified position was comprised of casing mail for an average of two and one-half hours, driving a postal vehicle for three hours and delivering mail for an average of two hours.

By letter dated October 20, 2004, the Office found that the position of modified letter carrier at the employing establishment was suitable, in accordance with appellant's medical conditions and that she had 30 days to accept the position. The Office also advised appellant that, if she failed to report to the offered position and failed to demonstrate that the failure was justified, her right to compensation would be terminated.

In letters dated October 25, November 16 and 18, 2004, appellant rejected the offer and indicated that it did not conform with her prescribed medical restrictions. She provided the Office with a copy of an August 20, 2004 duty status report in which Dr. Schade advised that appellant could not do any fine manipulation. In a letter dated December 8, 2004, the Office found that her reasons for refusing to accept the job were not valid. The Office advised her that the modified job offer did not require any fine manipulation, only grasping. Appellant was advised that the position remained available and that she would be afforded another 15 days within which to accept the offered position without penalty.

By decision dated January 10, 2005, the Office terminated appellant's entitlement to monetary compensation effective January 23, 2005, under 5 U.S.C. § 8106(c)(2), on the grounds that she failed to accept suitable employment.

By letter dated October 6, 2005, appellant requested reconsideration and submitted additional evidence.

In reports dated May 31 and July 15, 2005, Dr. Robert Ippolito, a Board-certified plastic surgeon, diagnosed bilateral carpal tunnel syndrome, shoulder impingement, ulnar neuropathy and cervical disc disease.

A June 20, 2005 magnetic resonance imaging (MRI) scan of the right shoulder, read by Dr. Rudolph Miller, a Board-certified diagnostic radiologist, revealed a posterior subcortical cyst, degenerative hypertrophy of the acromioclavicular joint, abutting supraspinatus in neutral position and fluid in the subacromial bursa.

A June 23, 2005 electromyography (EMG) scan and nerve conduction velocity study read by Dr. Edwin A. Cruz, Board-certified in internal medicine, revealed mild bilateral ulnar neuropathy at the elbow, no evidence of medial neuropathy at the wrist and C5-6 chronic radiculopathy. He advised clinical imaging and electrophysiological correlation.

Appellant also provided a copy of a June 28, 2005 emergency room note from a nurse.

In a July 15, 2005 report, Dr. Ippolito noted that appellant denied any prior trauma, diabetes or participation in any other sports. He opined that her bilateral cubital tunnel syndrome and cervical neck disease were a direct result of her employment at the employing establishment.

In a July 21, 2005 report, Dr. Schade noted that appellant was seen for followup on shoulder pain radiating into the neck, arms and thoracic back. He advised that she denied any new injury or trauma and advised that, “therefore, she injured her neck in the [October 26, 2003] on-the-job injury.”

In an August 3, 2005 treatment note, Dr. Ippolito diagnosed bilateral carpal tunnel syndrome, shoulder impingement, ulnar neuropathy and cervical disc disease and advised that appellant was being sent back to work.

In an August 31, 2005 treatment note, Dr. Ippolito noted that appellant was in for follow-up of her upper extremity injuries and opined that she had cervical radiculopathy that was “proving by EMG, cubital tunnel and carpal tunnel like symptoms.” He referred appellant for trigger point injections and noted there was no change in her work status.

Dr. Ippolito also submitted several duty status reports dating from August to November 2005, which contained a diagnosis of bilateral shoulder impingement and prescribed light-duty restrictions for work.

By decision dated December 23, 2005, the Office denied appellant’s request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions, nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees’ Compensation Act,¹ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

¹ 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”²

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant disagreed with the Office’s January 10, 2005 decision, which terminated her entitlement to monetary compensation, effective January 23, 2005, on the grounds that she refused to accept suitable employment. The underlying issue is whether the Office met its burden to terminate her monetary compensation on the grounds that the offered employment was suitable. However, appellant did not provide any relevant or pertinent new evidence.

In her October 6, 2005 request for reconsideration, appellant submitted several reports from Dr. Ippolito dating from May to August 2005 in which he diagnosed certain conditions. In a July 15, 2005 report, Dr. Ippolito opined that appellant’s bilateral cubital tunnel syndrome and cervical neck disease were a direct result of her employment at the employing establishment. In his August 31, 2005 report, Dr. Ippolito noted that appellant had cervical radiculopathy and carpal tunnel-like symptoms. However, he did not address her capacity to perform the duties of the modified job offer or explain why she could not perform the modified position. Therefore, his reports are not relevant to the underlying issue in this case. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

Appellant also submitted several diagnostic reports including a June 20, 2005 MRI scan and June 23, 2005 EMG/NCV studies. However, they did not address whether she could perform the offered position. As noted above, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵

Appellant also provided a copy of a June 28, 2005 emergency room note from a nurse. Health care providers such as nurses, acupuncturists, physician’s assistants and physical therapists are not physicians under the Act. Thus, a nurse’s opinion cannot be relevant to a medical issue as a nurse’s report does not constitute medical evidence.⁶

² 20 C.F.R. § 10.606(b).

³ 20 C.F.R. § 10.608(b).

⁴ *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

⁵ *Id.*

⁶ *See Jan A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term “physician.” *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

Appellant also submitted a July 21, 2005 report from Dr. Schade, who noted that she was seen for shoulder pain radiating into the neck, arms and thoracic back. He opined that, since she did not have any new injury or trauma, her condition was employment related. However, this report is not relevant as Dr. Schade did not address the modified-duty position or provide any opinion that the position was unsuitable such that appellant could not perform the modified duties.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law; or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 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