United States Department of Labor
Employees' Compensation Appeals Board

LAZARO QUINTANILLA, Appellant	)	
and	)	**Docket No. 06-402**
	)	**Issued: June 7, 2006**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX, Employer	)	

Appearances:
Jerry Guerra, 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 December 5, 2005 appellant filed a timely appeal from a December 23, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs denying his claim of an employment-related injury. The record also contains an Office decision dated November 21, 2005 denying appellant's request for further review of the merits under 5 U.S.C. § 8128(a). Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision and the nonmerit decision in this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 29, 2003 appellant, then a 50-year-old supervisor, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome as a result of his federal employment. Appellant did not stop work. By letter dated August 7, 2003, the Office advised appellant regarding the evidence he needed to submit to support his claim.

On August 11, 2003 appellant stated that from 1988 to 1996 he fabricated 200 to 400 hoses a day, that from 1998 he used a computer, and that these activities caused numbness in his fingers and pain in the palms of his hands and wrists beginning in 1991.[1] He noted a work-related surgery to the right wrist in 1983 or 1984.

In a report dated August 14, 2003, Dr. Paxton J. Longwell, Board-certified in psychiatry and neurology, stated that appellant's electromyogram evaluation and nerve conduction studies that day revealed bilateral carpal tunnel syndrome. On August 15, 2003 a supervisor stated that appellant fabricated from 100 to 300 hoses a day from 1988 to 1993, which required pushing, pulling, twisting and turning with the back part of the palm. From 1998, appellant worked as a supervisor on a computer at least four to five hours a day. On September 19, 2003 the Office denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between the diagnosed medical condition and the accepted employment factors.

On October 1, 2003 appellant requested an oral hearing and submitted a September 30, 2003 report from Dr. John Paul Schulze, a treating family practitioner and a general surgeon. He stated that appellant had bilateral carpal tunnel syndrome for 10 years, and continued to work in spite of severe wrist pain. The Office held an oral hearing on October 21, 2004 at which time the hearing representative provided appellant 30 days to submit additional medical evidence to support his claim.

On November 18, 2004 appellant submitted the November 9, 2004 report of Dr. Michael D. McDaniel, an osteopath, who stated that he was appellant's family doctor and was familiar with his bilateral carpal tunnel syndrome. Dr. McDaniel noted that Dr. Longwell diagnosed appellant's bilateral carpal tunnel syndrome by diagnostic tests and that appellant remained symptomatic with daily tingling and numbness. Dr. McDaniel opined that appellant's employment caused his condition, noting that his job required repetitive hand use of large wrenches 5 days a week for 10 years. Dr. McDaniel also noted that for the prior seven years appellant worked on a computer which contributed to his bilateral carpal tunnel syndrome.

On December 23, 2004 the hearing representative affirmed the Office's September 19, 2003 decision, finding that appellant failed to establish that his bilateral carpal tunnel syndrome was employment related. The hearing representative stated that appellant did not submit any further evidence within 30 days of the hearing.[2]

[1] Appellant worked as a metal tube maker from 1988 to 1996.

[2] The hearing representative noted only Dr. Schulze's report in his decision.

On November 1, 2005 appellant requested reconsideration and resubmitted medical evidence including Dr. McDaniel's November 9, 2004 report.

By decision dated November 21, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitive and insufficient to warrant merit review. The Office stated that appellant submitted a medical report and test results from Dr. McDaniel dated August 14, 2003 and November 9, 2004 that had been previously submitted and reviewed.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing 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 claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 causal relationship, generally, is rationalized medical opinion evidence.[6]

ANALYSIS

The Office erred by failing to consider evidence pertaining to appellant's claim which he submitted and which was received by the Office prior to the December 23, 2004 hearing representative's decision. The hearing representative stated in his decision that appellant was provided 30 days from October 21, 2004, the date of the oral hearing, to submit additional evidence but that "No further evidence was received." This statement, however, is erroneous. The record reflects that appellant submitted a November 9, 2004 report from Dr. McDaniel that the Office received on November 18, 2004, prior to the issuance of the December 23, 2004

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Id*.

decision. Thus, the record indicates that the Office received evidence submitted by appellant prior to the hearing representative's issuance of the December 23, 2004 decision, but that the hearing representative did not consider this evidence.[7]

The Act[8] provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,[9] it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,[10] it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.[11]

The Office did not review the evidence received prior to the issuance of its December 23, 2004 final decision. The Board, therefore, will set aside the Office's December 23, 2004 decision and remand the case to the Office to fully consider whether appellant's evidence established that his bilateral carpal tunnel syndrome is causally related to his employment. After such development of the case record as the Office deems necessary, an appropriate merit decision shall be issued.[12]

CONCLUSION

The Board finds that the case is not in posture for decision as the Office failed to properly consider the evidence of record.

[7] The Board also notes that the Office stated in its November 21, 2005 nonmerit decision that it received test results from Dr. McDaniel dated August 14, 2003. However the record fails to reflect a report from Dr. McDaniel on that date. The record does include a report from Dr. Longwell dated August 14, 2003 in which he concluded that the results of diagnostic tests revealed bilateral carpal tunnel syndrome. The Office's November 21, 2005 decision also erroneously indicated that Dr. McDaniel's report had been previously reviewed.

[8] 5 U.S.C. §§ 8101-8193.

[9] 20 C.F.R. § 501.2(c).

[10] 20 C.F.R. § 501.6(c).

[11] *William A. Couch*, 41 ECAB 548 (1990) (the Office failed to review evidence submitted four days prior to the issuance of the Office decision).

[12] Due to the Board's disposition of the first issue, it is not necessary for the Board to separately address the second issue.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2005 and December 23, 2004 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 7, 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