United States Department of Labor
Employees' Compensation Appeals Board

LINDA L. LENGYEL, Appellant	)	
	)	**Docket No. 06-594**
and	)	**Issued: June 1, 2006**
DEPARTMENT OF THE AIR FORCE, WRIGHT-PATTERSON AIR FORCE BASE, OH, Employer	)	

Appearances:
Linda L. Lengyel, 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 January 20, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated June 29 and September 29, 2005 which denied appellant's claim for an occupational disease. Appellant also appealed a December 27, 2005 decision which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed cubital tunnel syndrome of the right elbow in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On April 13, 2005 appellant, then a 58-year-old child development program technician, filed an occupational disease claim alleging that she developed cubital tunnel syndrome of the

right elbow while performing her work duties. Appellant became aware of her condition on March 23, 2005. She did not stop work.[1]

By letter dated May 3, 2005, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a statement dated March 29, 2005 which advised that her right forearm and elbow symptoms began in March 2005. She attributed her condition to work duties, including frequent lifting of children onto a changing table. Appellant submitted an electromyogram (EMG) dated June 14, 2002 which revealed moderate severity median mononeuropathy on the right with mild peripheral neuropathy. An EMG dated May 16, 2005 found bilateral mixed neuropathies affecting the ulnar, median and radial nerves confirming bilateral carpal tunnel syndrome. These findings were not unexpected in a person with confirmed hereditary neuropathy with a predisposition to pressure palsies. A return to work slip from Dr. Leslie A. Bentinganan, a Board-certified internist, dated June 21, 2002, noted that appellant was treated for right carpal tunnel syndrome and right ulnar neuropathy and could return to light-duty work. Other slips dated September 17, 2003 to June 10, 2005 noted appellant's treatment for left lower extremity neuropathy and right cubital tunnel syndrome and advised that she could work subject to lifting restrictions.

In an April 18, 2005 report, Dr. Eugene C. Kim, a Board-certified orthopedic surgeon, addressed appellant's history of numbness and tingling in the right upper extremity. He advised that appellant was previously diagnosed with preexisting hereditary neuropathy with liability for pressure palsies. Appellant's symptoms increased in the past month and she attributed her condition to lifting children at work. Dr. Kim noted a positive Tinel's sign over the ulnar nerve at the cubital tunnel and carpal tunnel and positive Phalen's test. He diagnosed hereditary neuropathy, carpal tunnel syndrome and cubital tunnel syndrome. In a report dated May 23, 2005, Dr. Kim recommended that appellant avoid prolonged repetitive wrist dorsiflexion, volar flexion and elbow flexion. In return to work slips dated May 10 and 26, 2005, Dr. Sneh L. Patwa, Board-certified in occupational medicine, noted that appellant could work subject to lifting and carrying restrictions.

In a decision dated June 29, 2005, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that her condition was caused by her employment duties.

By letter dated July 25, 2005, appellant requested reconsideration. She submitted unsigned patient encounter forms dated May 10 and 26, 2005, which listed her history of hereditary neuropathy and her current treatment for bilateral elbow and forearm pain. In a report dated May 10, 2005, Dr. Patwa diagnosed right cubital tunnel syndrome, hereditary neuropathy with liability for pressure palsies, and hypercholesterolemia. Appellant attributed her condition to awkward lifting at work. Dr. Jon F. Petersen, a Board-certified family practitioner, treated appellant on May 10 and 26, 2005. He listed hereditary neuropathy with liability for pressure

[1] The record reveals that appellant filed a separate claim for a traumatic injury sustained on July 30, 2001, file number 09-2039351, which was accepted by the Office. This claim is not before the Board on this appeal.

palsies, carpal tunnel syndrome and cubital tunnel syndrome. He noted that her condition of hereditary neuropathy was causing increasing difficulty in lifting and recommended permanent restrictions on wrist flexion and extension.

In a decision dated September 29, 2005, the Office denied modification of the June 29, 2005 decision.

In a letter dated October 28, 2005, appellant requested reconsideration, but did not submit any additional evidence. In letters dated September 28 to October 24, 2005, appellant indicated that she underwent an examination with Dr. Alan Jacobs, a Board-certified psychiatrist and neurologist, and that a report was forthcoming.

By letter dated November 21, 2005, the Office advised appellant that the record would be kept open until December 21, 2005, to allow her to submit additional medical evidence in support of her claim. In a letter dated November 28, 2005, appellant advised that in June 2005 she was assigned a light-duty position.

In a letter dated December 14, 2005, appellant indicated that she was injured on July 30, 2001 and sustained a broken ankle and nerve damage, file number 09-2039351. She suggested that her current condition might be causally related to the July 2001 injury. In a letter dated December 14, 2005, appellant indicated that she was sending Dr. Jacob's report to the Office in support of her claim. On December 21, 2005 the Office advised appellant that it had not received the report and requested clarification with regard to which claim she was attributing her right elbow condition, the traumatic injury claim occurring in July 2001 or the occupational disease claim of March 2005.

By decision dated December 27, 2005, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act 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 the 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. 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.[2]

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) factual statement identifying employment factors alleged to have caused or contributed to the presence

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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 claimant. The medical evidence required to establish causal relationship is generally 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, 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.[3]

ANALYSIS -- ISSUE 1

It is not disputed that appellant's duties as a child development program technician included repetitive lifting activities using her hands and arms. However, she has not submitted sufficient medical evidence to support that her bilateral upper extremity condition is causally related to the implicated employment factor. On May 3, 2005 the Office advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted reports from Dr. Kim who noted treating her for numbness and tingling in the right upper extremity. Appellant advised Dr. Kim that she attributed her symptoms to performing child care duties, such as lifting children. However, the physician merely noted the history as reported by appellant without providing his own opinion regarding whether her condition was work related.[4] To the extent that Dr. Kim is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[5] Additionally, the physician diagnosed hereditary neuropathy; however, he failed to address how this condition might be related to the diagnosed cubital tunnel syndrome. Dr. Kim did not address how appellant's work would aggravate or contribute to the described hereditary neuropathy.

Dr. Patwa diagnosed right cubital tunnel syndrome, hereditary neuropathy and hypercholestrolemia. Appellant also reported to the physician that the diagnosed condition of cubital tunnel syndrome was secondary to her awkward lifting at work. However, as noted, Dr. Patwa recorded appellant's attribution of a causal relationship to work without providing his

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value). *See also Laurie S. Swanson*, 53 ECAB 517, 524 (2002) (a physician's statements regarding a claimant's ability to work which consist primarily of a repetition of the claimant's complaints is not a basis for payment of compensation).

[5] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

own opinion regarding whether appellant's condition was work related.[6] To the extent that Dr. Patwa was providing an opinion, on causal relationship, he failed to provide a rationalized opinion explaining how bilateral upper extremity was caused or aggravated by her work.[7]

The record contains unsigned patient encounter forms dated May 10 and 26, 2005, which noted treatment for bilateral elbow and forearm pain in March 2005. However, the Board has held that unsigned medical reports are of no probative value as there is no evidence they are from a physician.[8] Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Petersen also treated appellant for hereditary neuropathy, carpal tunnel syndrome and cubital tunnel syndrome. However, the physician neither noted a history of the implicated work factors or provided an opinion regarding how appellant's employment caused or contributed to her condition. Therefore, this report is of diminished probative value.

The remainder of the medical evidence, including diagnostic test studies record of injuries dated June 18, 2002 and May 10, 2005, return to work slips from Dr. Bentinganan and Dr. Patwa fail to address the causal relationship between appellant's job and her diagnosed conditions. For this reason, this evidence is of diminished probative value.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[9] Appellant failed to submit such evidence, and the Office therefore properly denied her claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[10] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[11] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

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

[6] *See Frank Luis Rembisz, supra* note 4.

[7] *See Jimmie H. Duckett, supra* note 5.

[8] *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[9] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b).

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

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

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.[12]

ANALYSIS -- ISSUE 2

Appellant's October 28, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant submitted letters dated September 28 to December 14, 2005 and reasserted her contention that her right cubital tunnel syndrome was related to her employment. She advised that she underwent a comprehensive examination with Dr. Jacobs and that a report was forthcoming. However, as of December 27, 2005, the record did not contain a report from Dr. Jacobs. Her letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any new medical evidence with her reconsideration request.

The Board finds that the Office properly determined that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her October 28, 2005 request for reconsideration.[13]

CONCLUSION

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet her burden of proof. The Board further finds that the Office properly denied appellant's request for reconsideration.

[12] 20 C.F.R. § 10.608(b).

[13] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the December 27, September 29 and June 29, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 1, 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