United States Department of Labor
Employees' Compensation Appeals Board

LINDA F. SHORTER, Appellant	)	
and	)	**Docket No. 06-801**
	)	**Issued: June 15, 2006**
DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, Dallas, TX, Employer	)	

Appearances:
Linda F. Shorter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2006 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated November 18, 2005 denying her traumatic injury claim and of a nonmerit decision dated December 23, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury in the performance of duty on June 9, 2005; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 16, 2005 appellant, a 40-year-old claims examiner, filed a traumatic injury claim alleging that on June 9, 2005 she felt weakness, tingling and a burning sensation in her left shoulder, wrists and hands while typing data into the computer system.

In a letter dated October 17, 2005, the Office informed appellant that the evidence of record was insufficient to support her claim as no medical evidence had been received. The Office advised appellant of the type of medical and factual evidence required to support her claim and allowed her 30 days to provide the requested information.

On November 18, 2005 the Office received a November 7, 2004 electromyography (EMG) report by Dr. Frank Morrison, an examining Board-certified physiatrist, a June 28, 2005 report by Dr. R. Robert Ippolito, a treating Board-certified plastic and hand surgeon, and a statement dated November 9, 2005 by appellant.

In the November 7, 2004 EMG report, Dr. Morrison noted that appellant complained "of long-standing upper extremity pain, numbness, and weakness, originally dating to March 9, 1995 and to her customary employment activities -- including keyboard entry." Dr. Morrison diagnosed bilateral carpal tunnel syndrome due to the abnormal EMG findings. Dr. Ippolito diagnosed bilateral elbow epicondylitis, bilateral wrist median nerve compression and bilateral de Quervain's syndrome. A physical examination revealed tenderness at hands, wrists, shoulders and elbows, pain to palpation of both wrists at the styloid area," and normal range of motion in the thumbs, fingers, elbow, wrists and shoulders. With respect to a neurological examination, Dr. Ippolito reported negative Hoffmann's sign, Babinski's sign and positive Bunne-Littler test, bilateral Phalen's, carpal tunnel compression and Tinel's tests. He opined that appellant's "activities at work are consistent with data entry" and "[t]hese activities are nationally (OSHA [Occupational Safety and Health Administration]/Dep[artment] of Health) recognized causes of so-called cumulative disorder responsible for [appellant]'s conditions."

In a November 9, 2005 letter, appellant stated that in November 2003 she became aware of her bilateral carpal tunnel syndrome and filed an occupational disease claim.[1] Appellant noted that while typing on June 9, 2005 she felt a bilateral "sharp burning sensation in both my wrists and hands" as well as weakness and numbness in her thumbs, wrists and hands. She noted that her job duties include "repetitive typing 8 hours a day 40 hours a week" which she alleged exacerbated her carpal tunnel syndrome and cubital tunnel syndrome.

By decision dated November 18, 2005, the Office denied appellant's claim on the basis that she failed to establish fact of injury. The Office explained that appellant failed to establish that the event occurred as alleged and that she failed to submit medical evidence providing a diagnosis relating the claimed condition to her federal employment. The Office noted that appellant had been advised as to the deficiencies in her claim on October 17, 2005 but that no evidence had been submitted.

Appellant requested reconsideration on November 29, 2005.

In a nonmerit decision dated December 23, 2005, the Office denied appellant's request for reconsideration.

[1] The Board notes that no final decision relative to the occupational disease claim is contained in the case record.

LEGAL PRECEDENT -- ISSUE 1

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury.[3] Causal relationship is a medical question that generally can be resolved only by rationalized medical opinion evidence.[4]

ANALYSIS -- ISSUE 1

On October 17, 2005 the Office advised appellant of the need for additional factual and medical evidence. Although the Office received additional evidence on November 18, 2005, the November 18, 2005 decision makes no reference to this evidence. As noted previously, appellant submitted a November 9, 2005 statement as well as a November 7, 2004 EMG report by Dr. Morrison and a June 28, 2005 report by Dr. Ippolito. The Office's decision incorrectly stated that appellant did not submit any evidence in response to the October 17, 2005 request for additional factual and medical information.

The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.[5] Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.[6] In this instance, the Office neglected to consider appellant's November 9, 2005 statement as well as November 7, 2004 EMG report by Dr. Morrison and a June 28, 2005 report by Dr. Ippolito. Whether the Office receives relevant evidence on the date of the decision or several days prior, such evidence must be reviewed by the Office.[7] As the Office failed to address all the relevant evidence before it at the time of its November 18, 2005 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

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[2] *Alvin V. Gadd*, 57 ECAB ___ (Docket No. 05-1596, issued October 25, 2005); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Donna A. Lietz*, 57 ECAB ___ (Docket No. 05-1758, issued October 27, 2005); *John J. Carlone*, 41 ECAB 354 (1989).

[4] *See David Apgar*, 57 ECAB ___ (Docket No. 05-1249, issued October 13, 2005); *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Id.*

[5] 20 C.F.R. § 501.2(c); *see Thomas L. Agee*, 56 ECAB ___ (Docket No. 05-335, issued April 19, 2005).

[6] 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548 (1990).

[7] *Willard McKennon*, 51 ECAB 145 (1999).

CONCLUSION

The Board finds that the case is not in posture for decision.[8]

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 23 and November 18, 2004 are set aside and the case remanded for further proceeding consistent with the above opinion.

Issued: June 15, 2006
Washington, DC

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

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

[8] The Board finds that it is unnecessary to address the second issue in this case in view of the disposition of the first issue.