

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

CURTIS JOHNSON, Appellant

and

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

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**Docket No. 06-127
Issued: March 1, 2006**

Appearances:
Curtis Johnson, 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 October 24, 2005 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated July 12, 2005 which denied appellant's carpal tunnel claim, and an August 24, 2005 decision which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUES

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

FACTUAL HISTORY

On May 4, 2005 appellant, then a 55-year-old clerk, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome in his right hand as a result of the repetitive motion in his work duties. In support of his claim, appellant submitted a January 18, 2005 nerve conduction velocity report from Dr. Patrick J. O'Sullivan, a Board-certified neurologist, who

found it consistent with mild right carpal tunnel syndrome and mild left upper extremity polyneuropathy.

By letter dated May 24, 2005, the Office requested that appellant submit further information. No new evidence was timely submitted. By decision dated July 12, 2005, the Office denied appellant's claim for compensation. The Office found that appellant failed to submit medical evidence which established that the claimed medical condition resulted from factors of his federal employment.

On August 12, 2005 appellant requested reconsideration. He noted that he had been diagnosed with carpal tunnel syndrome in his left hand and wrist and that this resulted in the overuse of his right hand at work. He first noticed pain in his right hand and wrist in September 2004 but had not yet received any treatment. Appellant resubmitted Dr. O'Sullivan's January 18, 2005 report. In a June 29, 2005 report, Dr. O'Sullivan indicated that appellant had mild right carpal tunnel syndrome and mild upper extremity neuropathy on the right side.

By decision dated August 24, 2005, the Office denied appellant's request for reconsideration without reviewing the case on the merits.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

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.⁴

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe D. Cameron*, 41 ECAB 150 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989)

⁴ *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 265 (1999).

ANALYSIS -- ISSUE 1

The Board finds that there is no medical report of record which establishes that appellant's right carpal tunnel syndrome was caused or aggravated by his work factors. Dr. O'Sullivan indicated that appellant has right carpal tunnel syndrome but did not address the issue of the causal relationship between appellant's diagnosed carpal tunnel syndrome and his employment activities. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁵ There is no other medical evidence in the record. An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relation.⁶ Appellant has failed to submit rationalized medical evidence supporting that his right carpal tunnel syndrome is causally related to his federal employment. The Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, 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.⁷

ANALYSIS -- ISSUE 2

Appellant did 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. The January 18, 2005 report by Dr. O'Sullivan was previously submitted and does not constitute new evidence. Dr. O'Sullivan's June 29, 2005 report merely reiterated his earlier finding that appellant had right carpal tunnel syndrome. Therefore, it is considered cumulative of evidence previously considered by the Office and thus, insufficient to warrant review.⁸ Accordingly, the Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's claim as he failed to meet his burden to establish that his right carpal tunnel syndrome was causally related to factors of his

⁵ *Id.*

⁶ *Patricia J. Glenn*, 53 ECAB 159, 161 (2001).

⁷ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

federal employment. Furthermore, the Office properly denied appellant's request for reconsideration pursuant to 20 C.F.R. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 24 and July 12, 2005 are affirmed.

Issued: March 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