United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 06-1410**
	)	**Issued: November 13, 2006**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Fort Belvoir, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 10, 2006 decision denying his request for a review of the written record as untimely and a November 8, 2005 decision denying her claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

ISSUE

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on June 15, 1990; and (2) whether the Office properly denied appellant's request for a review of the written record as untimely filed.

FACTUAL HISTORY

On August 8, 2005 appellant, then a 53-year-old management assistant, filed an occupational disease claim alleging that she was diagnosed with carpal tunnel syndrome in both

hands. She first became aware of the injury on June 15, 1990 and first became aware of the injury and its relationship to her work on December 9, 1992. Appellant did not indicate that she had stopped work although the employing establishment indicated that she was scheduled to undergo surgery on August 24, 2005.

By letter dated August 16, 2005, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail the employment-related activities which she believed contributed to her condition, including all duties which required exertion or repeated movement of the wrist or hand. She was advised to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted 30 days within which to submit the requested information.

The Office received several reports from appellant's treating physician Dr. Robert C. Thomas, a Board-certified orthopedic surgeon, dated March 7 to June 12, 2002. Dr. Thomas determined that appellant had moderate to severe carpal tunnel syndrome of the right wrist. On March 7, 2002 he opined that this "may be somewhat work related to the use of the computer for the carpal tunnel."

Appellant submitted a statement describing those factors of her employment which she believed contributed to her carpal tunnel condition. She indicated that she had worked for the employing establishment since 1983 to the present. Appellant's job duties required her to use a computer, typewriters adding machines, calculators and various types of clerical equipment. Appellant alleged that her various jobs required her to spend hours typing, doing computer input, and writing and signing for items. In 1999, she became a management assistant, which required her to spend 85 percent of her time on the keyboard. Appellant alleged that her condition was work related as she did not have her symptoms prior to her federal service. In a separate statement, she alleged that, when her condition first appeared, she was a personnel clerk and required to continuously input information into the computer using both a mouse and a keyboard for four to five hours per day. Appellant reiterated the nature of her duties and the duration of time in which she performed them.

The Office also received copies of diagnostic test results from Dr. D.C. Hood, a Board-certified neurologist, who determined that appellant had evidence of moderately severe median neuropathy at the right wrist and severe median neuropathy on the left wrist.

Dr. Thomas submitted copies of treatment notes dating from June 8, 1996 to October 29, 2001, which showed that appellant's bilateral carpal tunnel was worsening. In an August 3, 2005 report, Dr. Thomas diagnosed bilateral carpal tunnel syndrome and stated that there was nothing further "other than consider surgical intervention for release of the carpal tunnels."

By decision dated November 8, 2005, the Office denied appellant's claim, finding insufficient medical evidence to establish that her carpal tunnel syndrome was related to her work activities.

On February 6, 2006 the Office received appellant's request for a review of the written record. By letter dated February 3, 2006, appellant alleged that she sent additional information requesting a review of the written record on "[November] 11th." She enclosed a November 14, 2005 report from Dr. Thomas. The Office also received a description of the management assistant position.

By decision dated March 10, 2006, the Office denied appellant's request for a review of the written record, finding that it was not made within 30 days of the November 8, 2005 decision. The Branch of Hearings and Review further denied the request finding that the issue could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[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 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. 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.[4]

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] *Id.*

ANALYSIS -- ISSUE 1

Appellant alleged that her carpal tunnel syndrome was caused by factors of her federal employment involving repeated movement of the wrists and hands. The Office denied the claim finding that the medical evidence did not demonstrate that the condition was related to her work as a management assistant. The Board finds that appellant has submitted insufficient evidence to establish that her carpal tunnel condition was caused or aggravated by her position. The evidence does not relate to work activities of typing, filling out forms and using the computer as causing her condition.

Appellant was treated for carpal tunnel syndrome, but there is no discussion by a physician explaining how factors of her employment caused or aggravated her carpal tunnel condition. The record contains no rationalized medical opinion explaining the cause of appellant's carpal tunnel syndrome. The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish her claim in a letter dated August 16, 2005.

Appellant submitted reports from Dr. Thomas who provided a diagnosis but did not address causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[5] On March 7, 2002 Dr. Thomas opined that this "may be somewhat work related to the use of the computer for the carpal tunnel." The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[6] This report is of diminished probative value as Dr. Thomas couched his support for causal relationship in speculative terms. He did not otherwise explain how or why the diagnosed condition was caused or aggravated by appellant's employment duties.

Diagnostic results were also received from Dr. Hood. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[7]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

---

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[7] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id.*

As there is no probative, rationalized medical evidence addressing and explaining why appellant's carpal tunnel condition was caused and/or aggravated by factors of her employment, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

While appellant submitted medical evidence with her request for a review of the written record and with her appeal to the Board, the Board cannot consider this evidence as its review of the record is limited to the evidence of record which was before the Office at the time of its November 8, 2005 merit decision.[10]

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.[11]

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."[12]

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."

The Board has held that the Office, in its broad discretionary authority to administer the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, including when the request is made after the 30-day period for requesting a hearing, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[13] The Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right for a hearing,[14] when the request is made after the 30-day period for requesting a hearing[15] and when the request is for a second hearing on the same issue.[16] In these instances the Office will determine whether a discretionary hearing should

[10] 20 C.F.R. § 501.2(c); *see Robert Henry*, 54 ECAB 776 (2003).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[14] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[15] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[16] *Johnny S. Henderson*, *supra* note 13.

be granted or, if not, will so advise the claimant with reasons.[17] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[18]

ANALYSIS -- ISSUE 2

Appellant's request for review of the written record was received by the Office on February 6, 2006, more than 30 days after the November 8, 2005 decision. Therefore, appellant is not entitled to an examination of the written record as a matter of right. The Office properly exercised its discretion in denying an examination of the written record upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting additional evidence to the Office.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[19] There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for an examination of the written record.

[17] *Id.; Rudolph Bermann, supra* note 14.

[18] *See Herbert C. Holley, supra* note 15.

[19] *Daniel J. Perea,* 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 10, 2006 and November 8, 2005 are affirmed.

Issued: November 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board