

She stated that she has since experienced numbness and tingling in her right hand. Appellant did not stop work in connection with her claimed November 17, 2000 injury. The employing establishment controverted appellant's claim. The employing establishment did not forward the claim to the Office at that time.

On May 16, 2003 appellant filed a recurrence of disability claim, stating that she experienced continuing numbness in her right hand and arm beginning on November 18, 2000, both at night and during the day. She noted that she was currently receiving workers' compensation benefits for a herniated disc under a separate claim. The employing establishment indicated that appellant stopped work on October 13, 2001 after sustaining the injury for which file number 13-2041606 was filed.

On May 23, 2003 the Office requested additional information concerning appellant's claim. In response, appellant provided a June 15, 2001 medical history statement characterizing her condition as a pinched nerve in her right wrist that began on November 17, 2000. She also submitted a June 15, 2001 report from Dr. Dileep N. Kumar, a Board-certified internist, stating that appellant injured her right hand on November 17, 2000 while delivering a 40- to 50-pound package. Dr. Kumar indicated that appellant had experienced "intermittent paresthesias and numbness in the right hand" since the claimed incident.¹

Other medical evidence received included several reports from Dr. Richard J. Wyzykowski, a Board-certified orthopedic surgeon. In a June 18, 2001 report, he noted appellant's complaints of "intermittent right hand numbness involving the median nerve distribution." The report indicated that appellant experienced "nocturnal paresthesias and [a.m.] awakening." Dr. Wyzykowski diagnosed right carpal tunnel syndrome and recommended that appellant receive an injection and a "cock-up wrist splint." In a status report dated August 8, 2001, he noted that appellant had experienced some relief from her carpal tunnel symptoms after her injection, but continued to have symptoms throughout 75 percent of the day, and also experienced nocturnal paresthesias despite wearing a brace. Dr. Wyzykowski issued a follow-up report on August 22, 2001, noting that appellant's symptoms had improved but that she still experienced symptoms throughout 50 percent of the day, with no nocturnal paresthesias.

By decision dated July 1, 2003, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to support a causal relationship between appellant's claimed condition and the work-related events.

On June 29, 2004 appellant, through her attorney, requested reconsideration. In support of her request, appellant submitted a June 28, 2004 report from Dr. Hieu T. Ball, a spine surgeon, who stated that appellant experienced "neck pain and numbness in her arm, hand and upper back that has been aggravated by her work (repetitive motion/trauma) and an injury on November 17, 2000 when she picked up a box of fruit (~50 pounds)." Dr. Ball indicated that he was still in the process of "obtaining data to make the proper diagnosis."

¹ Appellant also forwarded evidence pertaining to a separate claim accepted for a back injury, sustained on October 13, 2001, file number 13-2041606. The record indicates that appellant stopped work on the same day and did not return, and that she eventually had surgery for a herniated disc. This claim is not before the Board on the present appeal.

By decision dated August 24, 2004, the Office denied modification of its prior decision. The Office found that Dr. Ball's report did not establish a causal relationship between appellant's claimed conditions and her employment.

On July 22, 2005 appellant requested reconsideration and provided additional evidence. In a June 23, 2005 report, Dr. Ball discussed appellant's cervical spine condition and the results of diagnostic testing. He also stated that "it is my opinion, based on her history, the course of events in context of her job description for the U.S. Postal Service, it is within reasonable medical probability that [appellant's] cervical spine and C5 radicular problems, as well as her carpal tunnel syndrome, were the result of job-related repetitive trauma." In a July 14, 2005 form report, prepared by her attorney and filled out and signed by Dr. Ball who checked "yes" in response to the question "Is it your opinion that [appellant's] action of picking up the box of fruit on November 17, 2000 weighing approximately 30 pounds actually herniated the C7-T1 disc and caused the left-sided radiculopathy/radiculitis at C-5?" Dr. Ball added that there was "disc herniation in setting of repetitive motion." He checked "no" to the question "Is it your opinion that the incident of November 17, 2000 and my client's action of picking up the box of fruit aggravated or 'lit up' an already existing condition?" Finally, Dr. Ball checked "yes" to the question "Is it your opinion that the carpal tunnel syndrome is a separate issue to the November 17, 2000 incident and was brought about by the repetitive trauma in the performance of letter carrier duties such as, lifting, carrying, grasping, etc.?" Dr. Ball elaborated on his answer to the third question, stating that "predisposition for carpal tunnel syndrome may occur if there is abnormality in the neck (nerve problem due to 'double crush phenomenon')."

By decision dated January 23, 2006, the Office denied modification of its prior decisions.

On May 5, 2006 appellant requested reconsideration of the Office's January 23, 2006 decision. In support of her request was a March 6, 2006 report from Dr. Ball who stated that appellant experienced pain and numbness in her right hand when she lifted a 30-pound box of fruit on November 17, 2000 and that it was his opinion that the incident caused appellant's cervical disc herniation with radiculopathy, as well as her carpal tunnel syndrome. He elaborated, "The lifting of the box placed extreme pressure on her cervical spine herniating the disc. This herniation produced symptoms of pain and numbness first in the right hand, which quickly began to manifest in the right arm. This would be a normal progression since the original source of injury was in her cervical/thoracic spine." Dr. Ball also noted that appellant performed repetitive duties on the job and experienced "significant repetitive trauma." He concluded that her disc herniation caused her to be predisposed to carpal tunnel syndrome "because she continued for approximately one year to work under the repetitive trauma conditions."

Appellant also submitted an affidavit discussing the circumstances of the November 17, 2000 employment incident and noting that she continued to experience discomfort in her right arm.

By decision dated August 29, 2006, the Office denied appellant's reconsideration request without reviewing the merits of the case. The Office found that Dr. Ball's March 6, 2006 report was cumulative and repetitious and noted that none of the medical evidence established causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

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.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant⁸ and must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty. The evidence supports that the November 17, 2000 lifting incident occurred. However, appellant did not meet her burden of

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

⁷ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

proof in establishing a causal connection between her claimed hand condition and the lifting incident because the medical evidence does not include a rationalized narrative explanation of how the November 17, 2000 lifting incident caused or aggravated her injury.

Dr. Kumar's June 15, 2001 report is insufficient to establish a causal relationship between the November 17, 2000 incident and appellant's condition. He examined appellant and noted the history of her injury, stating that appellant "was delivering a package to a home, it was a heavy box of fruit weighing approximately 40 [to] 50 pounds." Dr. Kumar noted that it was during that delivery that appellant first experienced pain and numbness in her right hand. However, he did not provide rationale to support a conclusion that the November 17, 2000 lifting incident caused or aggravated a diagnosed condition. Dr. Wyzkowski's reports are also insufficient to establish appellant's claim as the physician did not render an opinion on causal relationship between the November 17, 2000 employment incident and a diagnosed condition.

Reports from Dr. Ball are also insufficient to establish appellant's claim. In a June 28, 2004 report, Dr. Ball stated that appellant's conditions were aggravated by her work and indicated that appellant had symptoms from "repetitive motion/trauma" as well as from the November 17, 2000 employment incident. However, Dr. Ball did not provide explanation or rationale to support his conclusion and indicated that he was unable to provide a diagnosis at that time. For example, he did not explain how the November 17, 2000 incident caused or aggravated a diagnosed condition. Additionally, he also attributed appellant's condition to repetitive activities at work occurring over a period of time. However, appellant's claim, filed on November 17, 2000, is for a traumatic injury occurring on that date, and not for an occupational disease occurring over a period of time.¹¹ Dr. Ball's June 23, 2005 report is also insufficient to establish causal relationship between appellant's diagnosed condition and employment incident. Dr. Ball devoted his discussion to appellant's cervical spine and carpal tunnel syndrome, which he attributed to repetitive stress rather than to traumatic injury. He did not specifically address how the November 17, 2000 lifting incident caused or aggravated a diagnosed condition. Appellant also submitted a form report, prepared by her lawyer and filled out and signed by Dr. Ball July 14, 2005. Dr. Ball indicated that the November 17, 2000 work incident caused appellant's herniated disc and C7-T1 radiculopathy and that appellant's carpal tunnel syndrome was a separate condition caused by repetitive stress. However, Dr. Ball did not provide sufficient medical reasoning for his opinion. For example, Dr. Ball stated that appellant had disc herniation in a "setting of repetitive motion trauma." However, as noted above, appellant's claim is for a traumatic injury, not for an occupational disease. Additionally, Dr. Ball indicated that abnormality in the neck can cause predisposition to carpal tunnel syndrome, but he did not explain how either condition was caused or aggravated by the November 17, 2000 lifting incident. Accordingly, the Board finds that Dr. Ball provided insufficient reasoning to support causal relationship between appellant's diagnosed conditions and the November 17, 2000 lifting incident.

For these reasons, appellant has not established that she sustained an employment-related injury on November 17, 2000.

¹¹ See 20 C.F.R. §§ 10.5(q), (ee), for definitions.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulation provides guidance for the Office in using this discretion.¹² The regulation provides that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

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

“(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].”¹³

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁵

ANALYSIS -- ISSUE 2

In support of her reconsideration request, appellant submitted Dr. Ball's June 28, 2004 and March 6, 2006 medical reports. However, Dr. Ball's June 28, 2004 report was submitted to the Office previously. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁶ Accordingly, appellant's resubmission of the report does not constitute the submission of new and relevant medical evidence.

Dr. Ball's March 6, 2006 report was not previously submitted to the Office. In denying appellant's reconsideration request, the Office found that Dr. Ball's March 6, 2006 report was cumulative and repetitious. However, in the March 6, 2006 report, Dr. Ball provided a degree of explanation and reasoning regarding the cause of appellant's condition that was not present in his

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.608(b) (1999).

¹⁵ *Annette Louise*, 54 ECAB 783 (2003).

¹⁶ *Edward W. Malaniak*, 51 ECAB 279 (2000); *see also Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsburg*, 32 ECAB 31, 33 (1980).

earlier reports. He stated that appellant had experienced disc herniation at C7-T1, with radiculopathy and had developed right carpal tunnel syndrome. Dr. Ball elaborated: “The lifting of the box placed extreme pressure on her cervical spine herniating the disc. This herniation produced symptoms of pain and numbness first in the right had, which quickly began to manifest in the right arm. This would be a normal progression since the original source of injury was in her cervical/thoracic spine.” Although the Office noted that the medical evidence was insufficient to establish causal relationship, the Board notes that the requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge her burden of proof. The requirement pertaining to the submission of evidence specifies only that the evidence be relevant and pertinent and not previously considered by the Office.¹⁷ The Board finds that Dr. Ball’s March 6, 2006 report is new and relevant meets the third regulatory requirement for obtaining a merit review.¹⁸

Accordingly, the Board finds that the Office improperly denied appellant’s reconsideration request without conducting a merit review. Upon return of the case record, the Office shall conduct a merit review of the claim and, following any further development deemed necessary, issue an appropriate merit decision.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty. The Board further finds that the Office improperly denied appellant’s reconsideration request without conducting a merit review.

¹⁷ *Kenneth M. Mroczkowski*, 40 ECAB 855 (1989).

¹⁸ 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2006 decision of the Office of Workers' Compensation Programs is affirmed. The August 29, 2006 decision of the Office is reversed and the case is remanded for further proceedings consistent with this decision.

Issued: April 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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