

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

G.G., Appellant

and

U.S. POSTAL SERVICE, BULK MAIL
CENTER, Seattle, WA, Employer

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**Docket No. 07-501
Issued: August 14, 2007**

Appearances:
Appellant, 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 December 13, 2006 appellant filed a timely appeal from the July 12, 2006 decision of the Office of Workers' Compensation Programs denying his occupational disease claim. He also timely appealed an August 14, 2006 nonmerit decision denying 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 case.

ISSUES

The issues are: (1) whether appellant established that he sustained an injury in the performance of duty causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

On July 16, 1999 appellant, then a 39-year-old mail handler, filed a traumatic injury claim, Form CA-1, alleging that he sustained an injury to his left forearm as a result of pulling

mail cans on July 15, 1999. The Office denied this claim¹ and the employing establishment sought reimbursement for the continuation of pay appellant had received. On April 25, 2006 appellant filed an occupational disease claim, Form CA-2, alleging that, as a result of his sack keying duties, which required him to pull sacks weighing up to 100 pounds with his left hand from 8 to 10 hours per day, he developed carpal tunnel syndrome. He stated that he first noticed numbing of the last two fingers on his left hand on July 15, 1999.

By letter dated May 3, 2006, the Office informed appellant that additional evidence was needed to establish his claim. Appellant provided an April 27, 2006 report from Dr. Gerald Smith, a Board-certified family practitioner, who stated that in August 1999 appellant was seen by Dr. Chin, who was his primary physician at that time, for pain and tingling in his left arm related to his job as a mail handler. Dr. Chin referred appellant to Dr. Robert Leyen, a Board-certified orthopedic surgeon, who diagnosed left cubital tunnel syndrome secondary to an employment injury. Dr. Smith stated that appellant was treated successfully with medication and splinting.

In a report dated August 16, 1999, Dr. Leyen stated that appellant had experienced numbness in the ulnar digits since July 15, 1999 when he was pulling heavy mail cans. He reported that Dr. Chin, appellant's primary physician, treated appellant with a cortisone shot in the shoulder and medication. Dr. Leyen stated that appellant had no history of problems with his upper extremities and had no other symptoms beyond numb fingers. In his physical examination, he noted that appellant had decreased sensation in his pinky and ring fingers and some decreased strength in the flexor tendons of those fingers. Dr. Leyen stated that an August 9, 1999 electromyogram revealed recent or acute left ulnar neuropathy across the elbow in the vicinity of the cubital tunnel and mild left medial neuropathy changes across the wrist. He placed appellant in a splint and removed him from work for two weeks to allow the elbow to rest and prescribed anti-inflammatory medication. Appellant also submitted Dr. Leyen's handwritten notes of the August 9, 1999 examination, which mentioned that he was pulling mail cans when he began experiencing numbness in his fingers.

In a written statement dated May 15, 2006, appellant stated that he was out of work for 45 days following his injury, but did not have any problems after his treatment was completed. He stated that he was a sack keyer from 1994 to 1999 and that his regular duties involved pulling sacks of mail weighing 60 to 100 pounds with his left hand. Appellant stated that he would sometimes volunteer to help pull mail cans on the inbound docks.

The employing establishment submitted an accident investigation report which stated that appellant felt tingling in his left hand while he was pulling cans on the inbound docks at 11:00 a.m. on July 15, 1999 but did not stop work because he thought it would go away. After going home, appellant felt numbness in his left hand and forearm. He reported his condition to his supervisor the next morning and was taken to a clinic, where he was diagnosed with tendinitis and placed on light duty. The employing establishment also submitted an October 25, 1999 letter that it wrote to the Office regarding appellant's initial traumatic injury claim. It informed the Office that Dr. Chin had classified appellant's condition as an occupational injury rather than

¹ The file from the 1999 claim was not before the Board, so the date and grounds for denial are unknown.

a traumatic injury and requested, therefore, that appellant's continuation of pay be denied. The employing establishment also submitted appellant's employment medical history documents, which indicated that he had no previous injury to his upper extremities. By decision dated July 12, 2006, the Office denied appellant's claim on the grounds that he had not presented any rationalized medical evidence establishing that his condition was caused by regularly pulling heavy sacks of mail with his left hand for several years prior to July 15, 1999. The Office found that Dr. Smith's diagnosis of cubital tunnel syndrome secondary to an employment injury and Dr. Leyen's description of appellant's work activities the day he first noticed symptoms were insufficient because they did not explain how the condition was medically related to the work activities.

On August 1, 2006 appellant requested reconsideration of the Office's denial. He indicated that a statement and package from his doctor were "on the way." On August 14, 2006 the Office received medical records and reports related to appellant's claim.

By decision dated August 14, 2006, the Office denied appellant's request for reconsideration on the grounds that he had submitted no new medical evidence or legal arguments that had not previously considered.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.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;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the

² 5 U.S.C. §§ 8101-8193.

³ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁶ *Ernest St. Pierre*, 51 ECAB 623 (2000).

rationalized opinion of a physician.⁷ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant⁸ and must be one of reasonable medical certainty,⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS – ISSUE 1

Appellant has established that he had a diagnosed condition and that he was subject to the accepted employment conditions. The issue to be determined is whether he has established a causal connection between the two. The Board finds that appellant has not provided sufficient medical evidence to establish that his cubital tunnel syndrome condition was causally related to the accepted factors of his federal employment.

On April 27, 2006 Dr. Smith, a Board-certified family practitioner, stated that appellant was treated by Dr. Chin in 1999 for pain and tingling in his left arm related to his job as a mail handler. He stated that appellant was referred to Dr. Leyen, a Board-certified orthopedic surgeon, who diagnosed left cubital tunnel syndrome secondary to an employment injury and successfully treated him with medication and splinting. Dr. Smith did not provide any rationale for his statement that appellant's pain and symptoms were related to his employment or which factors of employment were involved. The Board has held that medical opinions that are not fortified by medical rationale are of little probative value.¹¹ The Board finds that Dr. Smith's April 27, 2006 opinion is not sufficient to establish a causal connection between appellant's diagnosed condition and the accepted employment factors.

On August 16, 1999 Dr. Leyen, a Board-certified orthopedic surgeon, diagnosed acute left cubital tunnel syndrome. In his report and his handwritten notes, Dr. Leyen reported that appellant had experienced numbness in the pinky and ring fingers of his left hand since July 15, 1999 when he was pulling heavy mail cans and that his primary physician had treated him with a cortisone shot in the shoulder and medication. Dr. Leyen noted that appellant had no history of problems with his upper extremities and had no other symptoms beyond numb fingers. On examination, he found that appellant had decreased sensation in his ulnar fingers and decreased strength in the flexor tendons of those fingers. Dr. Leyen found that an August 9, 1999 electromyogram revealed recent or acute left ulnar neuropathy across the elbow in the vicinity of the cubital tunnel and mild left medial neuropathy changes across the wrist. He prescribed appellant anti-inflammatory medication, placed him in a splint and removed him from work for two weeks to allow the elbow to rest. Though Dr. Leyen stated that appellant's symptoms exhibited themselves when appellant was pulling mail cans, he does not indicate whether or how this activity caused appellant's cubital tunnel disorder. The Board has held that the mere fact

⁷ *Conrad 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).

¹¹ *Brenda L. DuBuque*, 55 ECAB 212 (2004).

that a disease or condition manifests itself during a period of employment is not sufficient to establish a causal relationship.¹² The Board finds that, without medical rationale, Dr. Leyen's report is insufficient to establish that appellant's occupational disease claim was caused by factors of his employment.

As the record contained no other medical opinion evidence establishing a connection between appellant's employment and his diagnosed condition, he failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.¹³ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.¹⁴ Section 10.608(b) provides that, when an application for reconsideration 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.¹⁵

The Act provides that the Office shall determine findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all the Office address all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision.¹⁶ The Board has held that this principal applies with equal force when evidence is received by the Office the same day a final decision is issued.¹⁷

¹² *Philip L. Barnes*, 55 ECAB 426 (2004).

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ 20 C.F.R. § 10.608(b).

¹⁶ *William A. Couch*, 41 ECAB 548 (1990).

¹⁷ *Linda Johnson*, 45 ECAB 439 (1994).

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's denial of his claim on August 1, 2006. He submitted medical evidence in support of this request, which was received by the Office on August 14, 2006, the same day the Office issued a nonmerit decision denying appellant's request for reconsideration. The Board finds that medical evidence related to appellant's claim was received but not reviewed by the Office prior to its rejection of appellant's request for reconsideration. Therefore, in accordance with Board precedent,¹⁸ the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury in the performance of duty causally related to factors of his federal employment. However, the Board also finds that the Office failed to review all of the relevant evidence in this case related to appellant's request for reconsideration. The Board, therefore, remands the case for a review of the evidence and issuance of an appropriate final decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2006 is set aside and remanded for further action consistent with this decision and the July 12, 2006 decision of the Office is affirmed.

Issued: August 14, 2007
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

¹⁸ *Id.*