United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 07-888**
	)	**Issued: August 3, 2007**
U.S. POSTAL SERVICE, PROVIDENCE PROCESSING & DISTRIBUTION CENTER, Providence, RI, Employer	)	

Appearances:
John L. Whitehouse, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2007 appellant filed a timely appeal from a December 6, 2006 nonmerit decision of the Office of Workers' Compensation Programs that denied her request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated November 21, 2005 and the filing of this appeal on February 12, 2007 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without conducting a merit review.

FACTUAL HISTORY

On February 20, 2004 appellant, then a 43-year-old mail handler, filed an occupational disease claim alleging that she developed right carpal tunnel syndrome in the performance of

duty.[1] She stated that she first became aware of her condition on September 5, 2003 and first related it to her employment on February 20, 2004. Appellant claimed that she experienced "severe swelling" of the right wrist while "traying" mail, a task involving repetitive wrist movement. She did not stop.

In support of her claim, appellant submitted a February 20, 2004 prescription note from Dr. Stanley M. Leitzes, an orthopedic surgeon, who prescribed a wrist splint.

On March 16, 2004 the Office requested additional information concerning appellant's claim. In response, appellant provided a February 20, 2004 narrative report from Dr. Leitzes who diagnosed carpal tunnel syndrome and noted that appellant worked for the employing establishment but did not articulate an opinion on causal relationship. She also submitted the fourth page of a September 5, 2003 diagnostic testing report from Dr. Albert A. Ackil, a neurologist, who found "electrophysiologic evidence of a mild right carpal tunnel syndrome."

In an April 10, 2004 statement, appellant explained the etiology of her claimed carpal tunnel syndrome. She stated that she was injured at work on December 13, 2000 and that her corresponding traumatic injury claim was accepted for neck, back and shoulder subluxation and she was placed on limited duty. Appellant stated that, after she returned to full duty in June 2003, she experienced numbness and tingling in all the fingers of her right hand and on February 20, 2004 she noticed that her wrist swelled up while she was traying mail, a task which "requires a lot of lifting and repetitive fine manipulation of the hands and wrists." She also provided several reports from Dr. Alvin Marcovici, a Board-certified neurosurgeon, who discussed appellant's conditions relating to her December 13, 2000 employment injury.

By decision dated June 1, 2004, the Office denied appellant's occupational disease claim because the medical evidence did not establish that her condition resulted from employment events.

In a February 20, 2004 narrative report, Dr. Leitzes noted that appellant was required to perform repetitive motion tasks at work. He indicated that she was restricted with regard to the use of her right hand. Dr. Leitzes explained: "Working on a repetitive basis would only flare-up [appellant's] symptoms and, therefore, [she] should be out of work with required use of her right hand."

In a September 21, 2004 report, Dr. David M. Boland, a Board-certified orthopedic surgeon and appellant's attending physician, opined: "I do feel that, more probably than not, [appellant's] carpal tunnel syndrome directly relates to the strenuous and repetitious use of her hands in the course of her employment." He explained that she "has no other illnesses that are associated with entrapment neuropathy such as diabetes, thyroid disease or some of the more rare illnesses." Dr. Boland stated that appellant characterized her symptoms as improving after weekends or other time off and worsening "after an aggressive day in the course of her employment." He also noted: "I am familiar with the activities that appellant has to do in the course of her employment and I would say that they are definitely repetitious and frequently they

[1] The record reflects that appellant had previously filed a traumatic injury claim, file number 010380202, which was accepted for "subluxation of the neck, back and shoulder."

are strenuous." Dr. Boland did not identify the specific employment factors or tasks to which he referred.

Appellant also provided a February 28, 2003 report from Dr. Anthony F. Merlino, a Board-certified orthopedic surgeon, who discussed conditions related to her December 13, 2000 traumatic injury. Dr. Merlino briefly mentioned appellant's carpal tunnel syndrome, noting that she had symptoms of carpal tunnel syndrome in both wrists, evidenced by a positive Tinel's sign and a positive Phalen's test which were not connected to her December 13, 2000 traumatic injury.

By decision dated January 19, 2005, the Office denied modification of its previous denial of appellant's occupational disease claim.

Appellant requested reconsideration on August 20, 2005. Through her attorney, appellant argued that the Office erroneously concluded that Dr. Boland's September 21, 2004 report did not establish causal relationship and also noted that Dr. Leitzes' February 20, 2004 report supported that repetitive activity would cause her symptoms to "flare up." Appellant also provided a February 22, 2005 report from Dr. Boland who opined that, while "there is no way of proving a causal relationship for this or other similar cases, appellant's carpal tunnel syndrome was "more probably than not" caused by her employment. Dr. Boland explained that, after her December 13, 2000 traumatic injury, appellant reported experiencing numbness and tingling in the fourth and fifth fingers only "which is almost never due to a carpal tunnel syndrome." However, Dr. Boland suggested that appellant developed carpal tunnel syndrome after returning to work following her December 13, 2000 traumatic injury. He stated: "It is not my job to list all of [appellant's] duties, but I do know working for the [employing establishment] requires strenuous and repetitious use of the hand which historically has been considered a causative factor for carpal tunnel syndrome." Dr. Boland also suggested that appellant's carpal tunnel syndrome may have been caused by "Double Crush Syndrome," which he explained "suggests that there can be entrapment at two sites along the nerve, most particularly in the spine and in the region of the carpal tunnel." He also noted that "the presence of degenerative disease in the neck does not in any way rule out carpal tunnel syndrome and indeed some experts feel that, if you have problems in the neck you are more likely to get a symptomatic carpal tunnel syndrome."

By decision dated November 21, 2005, the Office denied modification of its June 1, 2004 decision.

On September 5, 2006 appellant requested reconsideration. She stated that she had enclosed a list of her job duties, but no such list appears in the record. In an accompanying February 9, 2006 report, Dr. Boland advised that he was unable to list appellant's job duties or specific employment factors contributing to her carpal tunnel syndrome but, that she should generally avoid all strenuous activity. He stated: "It is my understanding that [appellant] works as a postal employee and that a good part of this job is both strenuous and repetitious."

In a December 6, 2006 decision, the Office denied appellant's reconsideration request without conducting a merit review finding that Dr. Boland's February 9, 2006 report essentially repeated his previous opinion and thus, was insufficient to require review on the merits.

LEGAL PRECEDENT

Under section 8128 of the Federal Employees' Compensation 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 regulations provides guidance for the Office in using this discretion.[2] The regulations provide 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
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> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[3]

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.[4] 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.[5]

ANALYSIS

The Board finds that the Office properly denied appellant's reconsideration request without conducting a merit review as appellant's request did not meet any of the above listed regulatory criteria. First, appellant's September 5, 2006 request did not show that the Office erroneously applied or interpreted a specific point of law. She did not contest any of the Office's legal conclusions. Second, appellant's request did not advance a new and relevant legal argument not previously considered by the Office. Third, appellant did not provide relevant and pertinent new evidence not previously considered by the Office sufficient to require the Office to reopen her claim for a merit review.

In her September 5, 2006 reconsideration request, appellant stated that she was providing two additional pieces of evidence: a list of her job duties and Dr. Boland's February 9, 2006 report. As noted above, the record does not contain a list of appellant's job duties that accompanied the reconsideration request. In any event, the underlying issue is medical in nature.

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[2] 20 C.F.R. § 10.606(b)(2) (1999).

[3] *Id.*

[4] 20 C.F.R. § 10.608(b) (1999).

[5] *Annette Louise*, 54 ECAB 783 (2003).

While appellant submitted a new medical report from Dr. Boland dated February 9, 2006 this report is not relevant as it essentially reiterated Dr. Boland's previous statements that he was unable to provide specific examples of tasks or employment factors that he believed to have caused appellant's carpal tunnel syndrome and that appellant's job was repetitive and strenuous. Dr. Boland's previous reports were duly considered by the Office in its prior decisions. The Board has held that medical evidence which merely repeats previous rationale or conclusions is not a basis for reopening a claim for a merit review upon a request for reconsideration.[6]

Accordingly, the Board finds that appellant's reconsideration request and corresponding evidentiary submissions are insufficient to require the Office to reopen her claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly denied appellant's reconsideration request without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 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

[6] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or which is duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).