

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

E.B., Appellant

and

**DEPARTMENT OF THE ARMY, WHITE
SANDS MISSILE RANGE, White Sands, NM,
Employer**

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**Docket No. 07-698
Issued: July 12, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 17, 2007 appellant filed a timely appeal from the July 18, 2006 merit decision of the Office of Workers' Compensation Programs which denied her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her recurrence claim. The Board also has jurisdiction to review the Office's August 31, 2006 nonmerit decision denying reconsideration.¹

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability in November 2005 causally related to her 1994 employment injury; and (2) whether the Office properly denied her August 7, 2006 request for reconsideration.

¹ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, has no jurisdiction to review the June 9, 2006 medical report that the Office received on September 18, 2006.

FACTUAL HISTORY

On February 27, 1995 appellant, then a 47-year-old management assistant, filed a claim alleging that her bilateral carpal tunnel syndrome was a result of her federal employment: "I was asked to process and edit on the computer a report of approximately 50 pages with a deadline plus my regular work load. Shortly afterwards, I started experiencing symptoms of carpal tunnel syndrome." Appellant first became aware of her condition on February 7, 1994.

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized surgical releases. On November 29, 1995 appellant underwent a right carpal tunnel release. On February 14, 1996 she underwent the same procedure on the left. The Office paid compensation for temporary total disability on the periodic rolls. Appellant's surgeon released her to full duty as of June 28, 1996. He released her from regular medical attention on April 24, 1997. On January 15, 1998 appellant received a schedule award for a five percent permanent impairment to each upper extremity. The evaluating physician reported that she should limit keyboarding to 15 to 30 minutes an hour and limit lifting to 10 to 20 pounds. Appellant retired in March 1998 and was employed in the private sector.

On May 17, 2006 appellant filed a claim alleging that she sustained a recurrence of disability in November 2005. She indicated that she first sought medical care after the recurrence on June 8, 2006.

On June 12, 2006 the Office asked appellant to submit additional information to support her claim, including her physician's opinion regarding the relationship between the need for continuing medical treatment and the accepted work-related condition. The Office noted that, if appellant was unable to work, she needed to submit her physician's opinion on why she was disabled. The Office advised: "Your physician's opinion is crucial to the claim."

Appellant responded to the Office on June 19, 2006:

"I have noticed in your response where you state that I am claiming for medical care for my bilateral carpal tunnel syndrome. I am not only claiming for medical care but I am also claiming for a substantial monetary settlement that your office did not provide me the first time around as well as for this recurrence. If I am correct, the word recurrence means a repetition of something that has happened before and that is what the CA2A form says: 'Repetition of Injury.' You only paid my medical expenses and 2/3 of my salary while I could not work after my surgeries, but no monetary settlement. It seems that when an attempt is made to receive a monetary compensation from the government it is like trying to take blood from a turnip. But I am not going to give up until I get what I am seeking, so therefore I would appreciate it immensely if you do not make it difficult for me but rather process the claim and allow me to receive what is due to me since the beginning."

* * *

“Most individuals receive a substantial amount to allow for the pain suffered, for not being able to work for a long period of time and like me today, I cannot even acquire a job because most jobs require working with the computer for extended periods of time or lifting more than 10 pounds and I cannot do either without enduring pain. I believe that I should be provided a substantial monetary compensation from the initial injury period til my working years are over which is probably 70ish. I deserve that. After all, I gave the government more than 23 years of my time. Remember, that not being able to use your hands and arms like a healthy individual is able to, can be very annoying to say the least. That type of injury should be considered a permanent dismemberment disability or something like it. I know that dismemberment means not having an arm or leg at all, but not being able to use effectively what you have almost means the same thing. Every time I use my hands and/or arms I am reminded of this injury and what I would give to not have this pain and discomfort.”²

Appellant then described the circumstances of the recurrence:

“The first week of doing transcription via the internet for a hospital, within the third day of transcribing I endured the most severe pain that I had had in a long time. I could not sleep for several days because it hurt so much. So if I was going to endure this type of pain every time I did transcription I decided it was not worthwhile the money which I only was able to earn a misly [sic] \$20[.00] for that week then I stopped altogether. I started this business from home, something I was looking forward to after receiving my certification from my training school, which by the way I am still paying because it cost me \$2400[.00] plus many other costs that I will never be able to make up. By the way, since my original injury and now the recurrence due to my original injury, I have always had some pain and discomfort on my hands, fingers, arms, shoulders and even my back.”

Dr. Pawain Jain, a Board-certified neurologist, examined appellant on June 8, 2006. He reported his findings on physical examination and diagnosed bilateral median nerve neuropathy: “[Appellant] has mild recurrent bilateral carpal tunnel syndrome, right is worse than left. Her original carpal tunnel syndrome was in February 1995, she had bilateral release later on and did well. The most likely cause for her carpal tunnel syndrome would be arthritis, hypothyroidism, repeated movements of wrist cause symptomatic carpal tunnel syndrome.” Dr. Jain noted that appellant was currently working from home and having difficulty doing daily activities of life.

In a decision dated July 18, 2006, the Office denied appellant’s recurrence claim. The Office found that the factual and medical evidence did not establish that the claimed recurrence

² The Board notes that there are no “settlements” in the federal workers’ compensation system. In addition to compensation for medical expenses and incapacity to earn wages, the Federal Employees’ Compensation Act provides compensation for the kind of permanent physical impairment, loss of use and pain appellant described. As noted earlier, she received this compensation in a January 15, 1998 schedule award. Although the impairment of her upper extremities is permanent, the Act allows only a limited number of weeks of compensation for this impairment. 5 U.S.C. § 8107(c)(1), (c)(19) (providing 312 weeks of compensation for the complete loss of an arm, with partial losses compensated proportionately).

resulted from the accepted work injury. The Office found that the medical evidence failed to show the relationship between her current condition and the original injury.

On August 7, 2006 appellant submitted an appeal request form indicating that she was requesting reconsideration.

In a decision dated August 31, 2006, the Office denied appellant's request for reconsideration. It found that appellant's request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

The Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁶

A "recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁷

ANALYSIS -- ISSUE 1

The circumstances of appellant's claim in November 2005 do not fit the definition of a recurrence. She did not describe a spontaneous change in her wrist condition, a change that occurred without an intervening injury or new exposure. Appellant explained instead that she endured severe pain after days of transcribing *via* the internet for a hospital, a business she had

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

⁵ *Id.* at § 10.5(x).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

⁷ 20 C.F.R. § 10.5(y) (1999).

started from home. This describes a new injury, a change in her wrist condition resulting from days of repetitive motion in private-sector employment.

Further, Dr. Jain, the neurologist, did not support a recurrence of disability causally related to appellant's 1994 employment injury. He made no attempt to explain how her severe pain in November 2005 was the direct and natural result of processing and editing a 50-page report on a computer in 1994. Dr. Jain noted that her original carpal tunnel syndrome was in February 1995, [sic] but he demonstrated no understanding of how this injury occurred. He did report that appellant did well after her surgical releases. Dr. Jain also reported that the most likely cause for her carpal tunnel syndrome would be arthritis or hypothyroidism or "repeated movements of wrist," but for reasons that remain unclear, he made no mention of the days appellant spent performing medical transcriptions in November 2005.

Because Dr. Jain offered no opinion based on a complete and accurate factual and medical history that appellant's bilateral wrist condition in November 2005 was causally related to the employment injury she sustained in 1994 -- much less an opinion supported by sound medical reasoning -- his report does not support appellant's claim that she sustained a recurrence in November 2005 causally related to her accepted employment injury. The Board will affirm the Office's July 18, 2006 decision denying her claim of recurrence.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁸ An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁹

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.¹⁰

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the

⁸ *Id.* at § 10.605.

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.606.

request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

Appellant's August 7, 2006 request for reconsideration is deficient on its face. It is nothing more than a bare request, unaccompanied by argument or evidence of any kind. Such request can meet none of the standards set forth above for obtaining a merit review of her claim. The Board will therefore affirm the Office's August 31, 2006 decision denying appellant's request. Appellant is not entitled to a reopening of her case.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained a recurrence in November 2005 that was causally related to her 1994 employment injury. The Board also finds that the Office properly denied appellant's request for reconsideration.¹²

ORDER

IT IS HEREBY ORDERED THAT the August 31 and July 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 12, 2007
Washington, DC

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

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

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

¹¹ *Id.* at § 10.608.

¹² The Board's decision does not preclude appellant from seeking an additional schedule award should the medical evidence establish greater impairment of her upper extremities.