

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

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C.M., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
San Antonio, TX, Employer )

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**Docket No. 07-142  
Issued: May 4, 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 October 21, 2006 appellant filed a timely appeal from the November 14, 2005 Office of Workers' Compensation Programs' merit decision finding that she failed to establish that she sustained an injury as alleged. She also timely appealed the Offices' October 13, 2006 decision which denied her request for further merit review. 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 has met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen her case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On September 22, 2005 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that she was affected by previous impairments of trigger finger, bilateral shoulder tendinitis and bilateral carpal tunnel with permanent impairments under claim

No. 160237880.<sup>1</sup> She alleged that these impairments caused spasms to her neck which were becoming more severe. Appellant first became aware of the injury and its relation to her work on September 1, 2005, noting that her prior injury caused her condition. She did not stop work. The employing establishment controverted the claim and noted that appellant's limited duties included, stuffing envelopes, rubber banding small bundles of mail, facing three by five inch forms and sometimes stuffing them into a desktop runner, hanging empty sacks on sack racks, assisting customers in processing applications, when needed at the window unit and cutting and tearing labels from undeliverable magazines. The employing establishment advised that appellant could switch tasks at her own discretion due to her existing carpal tunnel syndrome.

Appellant alleged that in 1992 she had trigger finger operations and was returned to a rehabilitation position where she developed carpal tunnel syndrome. She alleged that the postmaster, David Sanderson, insisted that she be given more assignments which aggravated her elbow, neck and right side. Appellant alleged that her restrictions prevented her from working from the "waist up." She requested placement in a pain management program by her physician.

In letters dated October 11, 2005, the Office requested additional factual and medical evidence from appellant and the employing establishment.

On October 18, 2005 appellant critiqued an employing establishment job offer and noted that her physician did not approve the job offer. She alleged that the job offer contained repetitive duties such as photocopying, keying and tossing mail which was too painful. Appellant advised that the activities required continuous use of her hands and wrists and "possible long hours." She indicated that she was enclosing additional evidence which included letters dated April 12 and September 20, 2005 and an April 5, 2005 Form CA-17.<sup>2</sup> In response to how her condition developed, appellant alleged that it occurred after she was taken out of the passport office and placed at the window to work with retail clerks which required her to perform repetitive tasks. She alleged that she would like a position with limited repetitive assignments.

By letter dated November 2, 2005, the employing establishment explained that appellant was previously issued a rehabilitation position under claim No. 160237880, with a date of injury of October 16, 1992. The employing establishment noted that it was in contact with her physician concerning a recent job offer, as well as union officials. The employing establishment noted that appellant accepted the job offer and after working for "approximately eight days" she decided that she did not want the job. The employing establishment noted that she appeared to be unhappy with her new assignment. The employing establishment asserted that appellant had filed the present claim to "eliminate her ability to work in the job she agreed to work."

By decision dated November 14, 2005, the Office denied appellant's claim finding that she had not established that the employment exposures occurred as alleged. The Office also found that appellant failed to submit the necessary medical evidence in support of her claim. The Office advised appellant that it was unclear why she filed an occupational disease claim when she did not identify any new work factors or provide medical documentation which was not already being handled under her previous claim.

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<sup>1</sup> The record reflects that appellant was working in a rehabilitation position under claim No. 160237880.

<sup>2</sup> The additional evidence was not enclosed with the record.

On November 22, 2005 the Office received a copy of the response from appellant to its letter dated October 11, 2005 and a copy of its November 14, 2005 decision.

On September 30, 2006 appellant requested reconsideration.

By decision dated October 30, 2006, the Office denied appellant's request for reconsideration as insufficient evidence was submitted to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

### **ANALYSIS**

In the instant case, appellant alleged that her prior injury which included impairments of the trigger finger, bilateral shoulder tendinitis and bilateral carpal tunnel under claim

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

No. 160237880, caused her neck spasms. The Office denied the claim finding that she failed to identify work factors to support a new claim and because there was no medical evidence providing a diagnosis which could be connected to work factors described in the case.

Appellant did not present any medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed. Furthermore, she did not submit a factual statement identifying any employment factors alleged to have caused or contributed to a presence or occurrence of a disease or condition as opposed to her prior claim related to the 1992 date of injury. The record reflects that appellant was given a new job offer at the employing establishment, which she apparently accepted. She alleged that her physician did not approve the job offer because it was comprised of repetitive work. However, appellant did not identify specific employment duties that she actually performed as the cause of her claimed new occupational disease, neck spasm. Instead, she asserted that prospective duties of a job offered to her by the employing establishment were outside her physical restrictions.<sup>7</sup> However, appellant did not submit medical evidence to support her assertion. She further noted that her condition developed after she was “taken out” of the passport office and placed at the window to work with retail clerks. Appellant did not state when this occurred or identify specific repetitive duties that were believed to be the cause of her claimed neck condition.

The employing establishment, in its November 2, 2005 letter, explained that appellant was placed in her rehabilitation position under the previous claim and that the position was made under the direction of appellant’s physician and union officials. It also advised that appellant could switch tasks at her own discretion. The employing establishment noted that she accepted the job offer and worked for approximately eight days.

The Board finds that appellant has not sufficiently identified specific employment factors alleged to have caused or contributed to the presence of her claimed neck condition. Furthermore, appellant did not submit any medical reports establishing the presence or existence of the claimed neck condition. The Board finds that appellant has not met her burden of proof in establishing a *prima facie* claim for compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Act,<sup>8</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2), of the implementing federal regulation which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

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

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<sup>7</sup> The possibility of a future injury does not constitute an injury under the Act. See *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

<sup>8</sup> 5 U.S.C. § 8128(a).

“(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 [the Office].”<sup>9</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

Appellant disagreed with the denial of her claim for a schedule award and requested reconsideration on September 30, 2006. However, she did not make any specific argument in support of her request for reconsideration. Appellant submitted copies of previously submitted reports, including a copy of the Office’s November 14, 2005 decision. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>11</sup>

Appellant, therefore, did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Further, she failed to submit relevant new and pertinent evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, she was not entitled to a merit review.<sup>12</sup>

Appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly refused to reopen appellant’s case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **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 also finds that the Office properly refused to reopen appellant’s claim for merit review under 5 U.S.C. § 8128(a).

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<sup>9</sup> 20 C.F.R. § 10.606(b).

<sup>10</sup> 20 C.F.R. § 10.608(b).

<sup>11</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

<sup>12</sup> *See James E. Norris*, 52 ECAB 93 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 13, 2006 and November 14, 2005 are affirmed.

Issued: May 4, 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