United States Department of Labor
Employees' Compensation Appeals Board

T.D., Appellant	)	
and	)	**Docket No. 08-1526**
	)	**Issued: December 22, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 6, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated March 26, 2008, which denied his request for reconsideration. He also appealed the Office's November 16, 2007 decision denying his occupational disease claim. 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 met his burden of proof that he sustained an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On September 14, 2007 appellant, then a 47-year-old timekeeping clerk, filed an occupational disease claim alleging that he sustained carpal tunnel issues in both wrists and muscle fatigue and inflammation in both forearms as a result of repetitive motion activity. He

stated that "all" of his assignments were repetitive and that he first became aware of his condition on August 1, 2000. Appellant did not stop work.

On September 18, 2007 the employing establishment challenged appellant's claim on the grounds that he failed to provide objective medical evidence to support his claim of a work-related condition.

In a September 25, 2007 letter, the Office notified appellant of the type of factual and medical evidence needed to establish his claim and allowed him to submit such evidence within 30 days. It asked appellant to describe in detail which employment-related activities required exertion or repeated movement of the wrist or hand.

On October 15, 2007 the Office received appellant's response. Appellant submitted a statement that described his condition and listed the various positions he has had with the employing establishment. The list further stated that each position required appellant to use his fingers, hands and/or forearms for "eight hours a day, five days per week." The list also stated that "except for [appellant's] current position ..., the repetitive … stress occurred in each location of employment since 1981." The list did not state the duties required for each position or provide any description of any particular physical activities that comprised specific duties.

Appellant also provided evidence from healthcare providers. In a May 4, 2001 medical report from Dr. Jeffrey Steier, a neurologist, appellant was diagnosed with carpal tunnel syndrome. A March 8, 2007 report from Roger Quinte, a physician's assistant, diagnosed chronic arm muscle fatigue and pain. An August 8, 2007 report from Dr. J. Michael Powers, a neurologist, provided the results of a nerve conduction study and Dr. Powers' impression that appellant has chronic bilateral carpal tunnel syndrome and extensor tenosynovitis in the forearms. In an updated progress note, Mr. Quinte reported that appellant has a history of carpal tunnel in both wrists and diagnosed tendinitis of the right arm.

On October 26, 2007 the employing establishment disputed appellant's allegation that his work activities contributed to his condition asserting that his positions since 2000 were self-paced and did not involve repetitive motion. It also submitted a standard position description for appellant's time and attendance clerk position.

In a November 16, 2007 decision, the Office denied appellant's claim for compensation on the grounds that appellant did not identify any employment factors that he believed caused or contributed to his condition. It also found that the medical evidence was insufficient to establish a causal relationship between appellant's condition and his employment activities.

On February 12, 2008 appellant filed a request for reconsideration of the Office's decision dated November 16, 2007. In the reconsideration request, he provided an updated list of positions he has held at the employing establishment stating that each position required 100 percent manual work. Appellant also submitted the final page of an unsigned treatment note dated September 8, 2006, which indicated that his job environment contributed to his lateral epicondylitis. The typed report included a handwritten notation with the words "Dr. John Marshall" and a telephone number. Additionally, appellant submitted a November 3, 2005 physical therapy assessment, which described his medical history as chronic right arm pain and

carpal tunnel-like symptoms for seven years off and on with repetitive motion with right hand from many years at work.

In a March 26, 2008 decision, the Office denied appellant's request for reconsideration on the grounds that he had not provided sufficient evidence to warrant merit review of the Office's decision dated November 11, 2007.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[1]

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 diagnosed condition is causally related to the employment factors identified by the claimant.[2]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, he must submit medical evidence showing that a medical condition was caused by such a factor.[3] It is the claimant's responsibility to prove that work was performed under these specific conditions at the time, in the manner and to the extent alleged.[4]

[1] *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[3] *Effie Morris*, 44 ECAB 470 (1993).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993) (in occupational disease cases, the claimant must submit evidence to identify fully the particular work conditions alleged to have caused the disease); *see also L.B.*, 59 ECAB ___ (Docket No. 07-1748, issued December 18, 2007) (stating that the claimant has the burden of proof to identify employment factors believed to have caused or aggravated a claimed employment-related condition).

ANALYSIS -- ISSUE 1

As noted, three criteria must be established in an occupational disease claim. The record supports that the first requirement, establishing the existence of a disease or medical condition, has been met as medical reports from Dr. Powers show that appellant has been treated for bilateral carpal tunnel syndrome and extensor tenosynovitis of the forearms.

However, appellant has not identified employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition. His CA-2 form states that "repetitive motion activity" from job assignments caused his claimed carpal tunnel and muscle fatigue. Appellant does not indicate any particular assignments or describe the type of activities the assignments require. Also, his September 14, 2007 statement lists the positions he has held at the employing establishment and describes each position as requiring use of fingers, hands and forearms for "eight hours a day, five days per week." However, the job descriptions in appellant's statement are vague and do not identify specific work activities that cause his carpal tunnel syndrome or muscle fatigue. For example, in his current position, appellant stated that he used his fingers, hands, wrists and forearms for eight hours per day and five days per week, but he did not specify particular job activities that required repetitive use of his fingers, hands, wrists or forearms. Furthermore, the job description for a time and attendance clerk, provided by the employing establishment, does not describe duties or responsibilities that require constant repetitive motion of the fingers, hands and forearms. Additionally, the employing establishment disputed that appellant's positions involved repetitive motions and noted that his duties were self-paced. The Office's September 25, 2007 letter asked that he describe in detail the work activities that required exertion or repeated movement of the wrist or hand. Despite the fact that the Office's letter advised appellant of the type of factual evidence necessary to support his claim, he failed to provide such evidence identifying specific work activities that caused his claimed condition. Consequently, he has not identified employment factors alleged to have caused or contributed to his claimed condition.

As appellant has not identified employment factors alleged to have caused or contributed to a diagnosed condition, it is not necessary to consider medical evidence addressing causal relationship.[5] In any event, the medical reports from Dr. Steier and Dr. Powers do not reference contributing employment factors and also do not provide an opinion as to whether employment factors caused or adversely affected appellant's condition.[6] Furthermore, reports from physician's assistants cannot be considered as medical evidence.[7]

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[5] *See S.P.*, 59 ECAB __ (Docket No. 07-1584, issued November 15, 2007); *Bonnie Contreras*, 57 ECAB 364 (2006) (where a claimant has not established an employment incident alleged to have caused an injury, it is not necessary to consider the medical evidence).

[6] *See K.W.*, 59 ECAB __ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *Willie Miller*, 53 ECAB 697 (2002).

[7] *See* 5 U.S.C. § 8101(2) (defining the types of medical professionals that fall within the meaning of "physician"); *J.M.*, 58 ECAB __ (Docket No. 06-2094, issued January 30, 2007) (the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a physician as defined by section 8101(2) of the Act).

Therefore, the evidence of record is insufficient to meet appellant's burden of proof to establish that his carpal tunnel syndrome and muscle fatigue are causally related to specific factors of his federal employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[8] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[9]

The Board has held that the submission of evidence which repeats evidence already in the record[10] or does not address the particular issue involved does not constitute a basis for reopening a case.[11]

ANALYSIS -- ISSUE 2

In support of his February 12, 2008 request for reconsideration, appellant provided an updated narrative statement, a physical therapy assessment, and the final page of an unsigned and incomplete medical treatment note. His request for reconsideration did not attempt to show that the Office erroneously applied the law because his request did not identify to a point of law that should have been applied or interpreted differently. Appellant also did not attempt to advance a new relevant legal argument given that his updated statement and additional medical notes sought to support and supplement evidence already in the record. Although he submitted additional evidence, his updated narrative statement is identical to his November 16, 2007 statement with the exception that each job description also states that "[t]his job was 100 percent manual work." This additional description does not address the defect in appellant's previous statement given that he did not identify the specific duties that required repetitive use of his fingers, hands and forearms. This statement is essentially repetitive in nature.[12] Therefore, appellant's updated narrative does not constitute relevant new evidence not previously considered by the Office.

The physical therapy assessment cannot be considered as relevant new evidence because it did not sufficiently identify work factors requiring repetitive motion. The assessment is also

[8] 20 C.F.R. § 10.606(b)(2).

[9] *Id.* at § 10.608(b).

[10] *Jerome Ginsberg*, 32 ECAB 31 (1980).

[11] *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Diekemper*, 31 ECAB 224 (1979).

[12] *See supra* note 10.

not probative as medical evidence because physical therapists are not regarded as physicians as defined by the Act.[13] Therefore, this assessment is insufficient to require a merit review.

Additionally, the September 8, 2006 medical treatment note is not relevant because it is incomplete, consisting of only the last page of a treatment note that was apparently from the office of Dr. John Marshall but was not signed by a physician. Because the report is incomplete and does not identify particular employment duties alleged to have caused appellant's condition, it is not relevant.[14]

Consequently, the Office properly denied appellant's reconsideration request without a merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an occupational disease causally related to his federal employment. The Board also finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated March 26, 2008 and November 16, 2007 are affirmed.

Issued: December 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[13] *See David Sawchuk*, 57 ECAB 316 (2006) (physical therapists are lay individuals not competent to render a medical opinion under the Act).

[14] *See R.M.*, 59 ECAB __ (Docket No. 08-734, issued September 5, 2008) (the Board has found that reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence); *Richard Williams*, 55 ECAB 343 (2004) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim).