United States Department of Labor
Employees' Compensation Appeals Board

J.I., Appellant	)	
	)	**Docket No. 07-1975**
and	)	**Issued: January 24, 2008**
NATIONAL PARK SERVICE, YOSEMITE NATIONAL PARK, Yosemite, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2007 appellant timely filed an appeal of an April 27, 2007 merit decision of the Office of Workers' Compensation Programs which denied his occupational disease claim and a May 21, 2007 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant sustained an occupational disease in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits.

FACTUAL HISTORY

On June 18, 2006 appellant, then a 48-year-old maintenance worker, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome as a result of his employment, specifically repetitive hand motions. He first became aware of his condition on June 6, 2006. Appellant submitted a June 22, 2006 functional capacity evaluation performed

by Chris Dahlhoff, a physical therapist, his work history and job descriptions, a list of medical treatment providers and photographs of his working environment.

On July 11, 2006 the Office requested additional factual information and medical evidence from appellant who responded in a July 24, 2006 letter, noting that he drove a truck and picked up trash as part of his job duties. He had accepted claims for his left and right shoulders due to overuse and had not worked since a failed right shoulder surgery in August 2003.

By decision dated August 11, 2006, the Office denied appellant's occupational disease claim on the grounds that the evidence did not establish that his claimed medical condition was related to his work activities.

Appellant requested reconsideration. In a June 30, 2006 chart note, Dr. Robert J. Rose, Board-certified in family practice, noted that appellant complained of tingling in his hands six years prior with burning in his upper arms. In an August 22, 2006 note, he stated that "consistent with the nature of the illness and [appellant's] occupation with repetitive use of his arms, wrists and hands, he is a likely candidate for carpal tunnel syndrome. Carpal tunnel syndrome is the result of repetitive, generally inappropriate use of the forearms and hands. Also, it typically shows itself years after the overuse or abuse injury." Dr. Rose stated that appellant's claim was justified, even though he had not worked in over three years. In an undated referral note, he diagnosed bilateral carpal tunnel syndrome.

In a November 30, 2006 letter, Dr. E. Kip Hensley stated that he conducted electromyogram and nerve conduction studies. They showed bilateral carpal tunnel syndrome with the right being worse than the left. Dr. Hensley noted that appellant felt that his condition developed due to repetitive hand and arm movement performed while working. He indicated that people develop carpal tunnel syndrome without doing repetitive work and people perform repetitive work without developing carpal tunnel. Dr. Hensley could not unequivocally state that appellant's occupation caused his problems. In a December 8, 2006 letter, Dr. Rose stated that appellant was having left carpal tunnel surgery.

On April 27, 2007 the Office denied modification of the August 11, 2006 decision on the grounds that the medical evidence did not establish a causal relationship between appellant's condition and his work duties.

On May 21, 2007 appellant submitted a reconsideration request. He wrote: "have performed manual labor for U.S.N.P.S. since 1993" on the form. No additional information was received.

On July 9, 2007 the Office denied reconsideration, finding that appellant had not submitted relevant evidence or raised substantive legal arguments to require a merit review.

LEGAL PRECEDENT -- ISSUE 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.[1]

The medical opinion needed to establish an occupational disease claim 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.[2] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the condition and employment. Neither the fact that the condition became apparent during a period of employment, nor the employee's belief that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.[3]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained bilateral carpal tunnel syndrome due to factors of his federal employment. The Board finds that he has submitted insufficient medical evidence to establish that his condition was caused or aggravated by his federal employment.

The medical evidence establishes that appellant has bilateral carpal tunnel syndrome. The Office has accepted the repetitive use of his hands in his job as a maintenance worker. The issue is whether the medical evidence establishes that appellant's employment activities were the cause of appellant's condition.

Appellant submitted a functional capacity evaluation performed by a physical therapist. However, physical therapists are not physicians as defined under the Act.[4] Therefore, the report does not constitute medical evidence.

The reports of Dr. Rose, an attending family practitioner, do not provide sufficient medical rationale to establish causal relation between appellant's work duties and his condition. Dr. Rose noted appellant's symptoms indicating that he was a "likely candidate for carpal tunnel syndrome." However, he did not explain how appellant's use of his hands while driving a truck or picking up trash would cause or contribute to the diagnosis of carpal tunnel syndrome. To establish causal relationship, appellant must submit a physician's opinion which reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, state whether the employment injury caused or aggravated the diagnosed condition. The opinion should be based on a full history with supporting medical rationale.[5] Dr. Rose did not explain any inappropriate use of appellant's forearms or hands or adequately

[1] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ___ (Docket No. 05-715, issued October 6, 2005).

[2] *Donald W. Wenzel*, 56 ECAB 390 (2005).

[3] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[4] 5 U.S.C. § 8101(2), "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

[5] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006), *Calvin E. King*, 51 ECAB 394 (2000).

explain the presence of the condition in light of noting that appellant had not worked in over three years.

Dr. Hensley diagnosed bilateral carpal tunnel syndrome based on EMG and nerve conduction studies. He noted that appellant believed his condition was due to his employment. However, Dr. Hensley did not provide an unequivocal opinion on causal relation. He stated that "people develop carpal tunnel without doing repetitive work just as there are many people who do repetitive work and do not develop carpal tunnel syndrome." Dr. Hensley's opinion is therefore of diminished probative value. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[6] The reports of record do not provide adequate rationale to support causal relation.

The medical opinion needed to establish an occupational disease claim must be of reasonable medical certainty and supported by rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7] No such opinion has been submitted. Appellant failed to submit sufficient medical evidence in support of his claim. He has failed to discharge his burden of proof to establish that he sustained carpal tunnel syndrome due to factors of his federal employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, 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.[8]

ANALYSIS -- ISSUE 2

The Office is required to reopen a case for merit review if an application for reconsideration demonstrates that the Office erroneously applied a specific point of law, puts forth relevant and pertinent new evidence not previously considered or presents a new relevant legal argument. Appellant did not argue that the Office erroneously applied a point of law or submit new relevant evidence or present a new legal argument. The only addition to the record made by appellant was writing "have performed manual labor for the U.S.N.P.S. since 1993" on the reconsideration request form. This is insufficient to require further merit review by the Office. The underlying issue in this case is medical in nature. Appellant did not submit any new or relevant medical opinion evidence in support of his request.

[6] *D.D.*, *supra* note 5, *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glann*, 53 ECAB 159 (2001).

[7] *Donald W. Wenzel*, *supra* note 2.

[8] 20 C.F.R. § 10.606(b)(2)(iii) (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty. The Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the July 9 and April 27, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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