

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

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**M.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Silver Spring, MD, Employer**

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**Docket No. 08-525  
Issued: June 23, 2008**

*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 December 11, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 30, 2007 merit decision denying his occupational disease claim, and the November 21, 2007 decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On August 24, 2005 appellant, a 50-year-old letter carrier, filed an occupational disease claim form (CA-2) alleging that he developed carpal tunnel syndrome (CTS) as a result of his employment duties. In support of his claim, he submitted disability slips from Dr. Rida N. Azer,

a Board-certified orthopedic surgeon. On August 3, 2005 Dr. Azer diagnosed carpal tunnel and lumbar disc syndromes, and stated that appellant was disabled from work from August 3 through 24, 2005. On August 24, 2005 she reiterated her diagnoses, and indicated that appellant was disabled from August 24 through 31, 2005.

In a letter dated September 7, 2005, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to submit details regarding the employment duties he believed caused or contributed to his claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to the cause of his diagnosed condition.

By decision dated October 11, 2005, the Office denied appellant's claim on the grounds that he had failed to establish the fact of injury. The Office found that the evidence was insufficient to establish that the events occurred as alleged. Further, there was no diagnosis which could be connected to the claimed event.

On February 6, 2006 appellant requested reconsideration. In support of his request, he submitted a January 16, 2006 report from Dr. Azer who stated that appellant was experiencing pain in his lumbar spine, as well as increasing pain, numbness and weakness in both hands. Dr. Azer's examination revealed tenderness over the carpal ligaments bilaterally, and hypothesia over the right and left medial nerve distribution. She noted a positive Tinel's sign of the right and left median nerve and a positive Phalen's sign bilaterally. A 2005 electromyography (EMG) showed findings compatible with bilateral CTS, right L5 radiculopathy, and left L5 nerve root irritation. Dr. Azer recommended that appellant undergo another EMG and nerve conduction study to determine whether his condition was deteriorating. She also stated that appellant should undergo additional testing, including a complete blood count and plasma protein electrophoresis, to ascertain whether his CTS was due to other causes, such as rheumatoid arthritis or collagen diseases.

In an undated statement, Lashawn Dennis, an employing establishment manager, described appellant's duties as a city letter carrier. He stated that appellant used his hands and wrists in repetitive motion while casing mail in the office two to four hours per day. Appellant also delivered mail to door slots and mailboxes on a daily basis, which required repetitive motion of his hands and wrists for four to six hours per day.

By decision dated May 23, 2006, the Office found that appellant had identified employment activities which he believed had caused or contributed to his alleged condition, but that he had failed to provide medical evidence acknowledging that those job duties were connected to a diagnosed condition. The Office, therefore, affirmed its denial of appellant's claim, finding that appellant had not established the fact of injury.

On October 4, 2006 appellant requested reconsideration of the Office's May 23, 2006 decision. He submitted a July 13, 2006 statement describing his repetitive duties as a letter carrier, which included casing mail three hours per day; loading trays of mail into a mail truck; rolling loaded flat beds with both hands; driving and manually setting the parking brake at every stop; manually rolling down his window at each mailbox; and inserting approximately 200 letters

into apartment mailboxes each day. Appellant stated his belief that these work activities caused his CTS condition.

By decision dated March 30, 2007, the Office denied modification of its May 23, 2006 decision on the grounds that appellant had failed to provide any rationalized medical evidence explaining how and why his claimed condition was caused or affected by identified work activities.

On November 13, 2007 appellant submitted an appeal request form, in which he requested reconsideration of the Office's March 30, 2007 decision. By decision dated November 21, 2007, the Office denied his request for merit review, finding that he had neither raised a substantive legal question, nor submitted new and relevant evidence.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged,<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</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 the 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.<sup>4</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997)

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.<sup>6</sup>

### ANALYSIS -- ISSUE 1

Appellant identified employment activities which he believed to be responsible for his CTS condition. However, the medical evidence of record is insufficient to establish that his claimed medical condition was caused or aggravated by these employment factors. Therefore, appellant has failed to meet his burden of proof.

Medical evidence of record consists of August 3 and 24, 2005 disability slips, and a January 16, 2006 report from Dr. Azer. None of these reports are sufficient to establish appellant's claim. As Dr. Azer's disability slips are devoid of any opinion on the cause of appellant's condition, they are of limited probative value.<sup>7</sup> On January 16, 2005 she stated that appellant's symptoms were compatible with bilateral carpal tunnel syndrome. However, Dr. Azer did not provide a definitive opinion as to the cause of the condition. Rather, she recommended that appellant undergo additional testing to determine the cause of the CTS. Moreover, Dr. Azer did not describe appellant's job duties, or explain the medical process through which such duties would have been competent to cause the claimed condition. Therefore, this report is also of diminished probative value.

Appellant expressed his belief that his claimed condition resulted from his duties as a carrier. However, the Board has held that 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 two.<sup>8</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how his claimed conditions were caused or aggravated by his employment, he has not met his burden of proof to establish that he

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<sup>6</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Dennis M. Mascarenas*, *supra* note 3 at 218.

<sup>7</sup> See *A.D.*, 58 ECAB \_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>8</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

sustained an occupational disease in the performance of duty causally related to factors of employment.

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

The Federal Employees' Compensation Act<sup>10</sup> 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 may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>11</sup>

The application for reconsideration 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.<sup>12</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.<sup>13</sup> Where the 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.<sup>14</sup>

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

Appellant's November 13, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. In fact, he submitted no medical or factual evidence in support of his request for reconsideration. Therefore, the Office properly determined that appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

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<sup>10</sup> 5 U.S.C. § 8101 *et seq.*

<sup>11</sup> 20 C.F.R. § 10.605.

<sup>12</sup> 20 C.F.R. § 10.606.

<sup>13</sup> *Donna L. Shahin*, 55 ECAB 192 (2003).

<sup>14</sup> 20 C.F.R. § 10.608.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his November 13, 2007 request for reconsideration .

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's claim for merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21 and March 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 23, 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