

Appellant submitted an October 18, 2007 form designating Dr. Scott A. Baden, a Board-certified orthopedic surgeon, as her attending physician. In an October 19, 2007 medical report, Dr. Baden stated that appellant sustained a lumbosacral strain. He opined that she was temporarily totally disabled from October 19 until November 2, 2007. A November 6, 2007 report of a physician whose signature is illegible stated that appellant sustained de Quervain's tenosynovitis and herniated nucleus pulposus of the lumbosacral spine. Appellant was released to return to work on November 7, 2007 with restrictions.

By letter dated November 16, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional factual and medical evidence she needed to submit within 30 days. The Office also requested that the employing establishment respond to her allegations. It further requested a copy of her position description and physical requirements, and an explanation of how her actual duties varied from the official position description. The employing establishment was afforded 30 days to submit the requested information. It did not respond within the allotted time period.

On November 16, 2007 Dr. Baden stated that appellant's right de Quervain's tenosynovitis and right carpal tunnel syndrome were employment related.

In a December 5, 2007 letter, appellant requested an extension to submit a medical report from Dr. Baden as he was out-of-town and she could not obtain an appointment until December 17, 2007. She stated that she received an epidural to treat the swelling in her back.

By decision dated December 18, 2007, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that she sustained an injury causally related to the October 18, 2007 employment incident.

The Office subsequently received Dr. Baden's December 4, 2007 form report. Dr. Baden reiterated his prior diagnosis of de Quervain's tenosynovitis. He stated that appellant could work eight hours per day, five days per week with restrictions.

By letter dated January 28, 2008, appellant requested reconsideration. In a November 7, 2007 report, Dr. Baden provided a history that he initially evaluated appellant on May 21, 2007 regarding her complaint of bilateral wrist pain. He stated that, during his October 19, 2007 examination, appellant complained of increasing right wrist pain for which she filed a workers' compensation claim. Appellant received cortisone injections and physical therapy and was prescribed medication. Dr. Baden reevaluated her on November 2, 2007 and she received a cortisone injection in the right wrist. He stated that, in the interim, she had sustained a lumbar spine injury for which she filed a workers' compensation claim and that she was temporarily totally disabled. Dr. Baden diagnosed a lumbar spine strain. Appellant advised him that her duties as a letter carrier required simple grasping four hours per day, driving a vehicle six hours per day, continuous lifting 10 pounds, and pulling and pushing one hour per day. Dr. Baden stated that it was known that repetitive upper extremity activities could cause and/or contribute to the development of carpal tunnel syndrome and de Quervain's tenosynovitis. He opined that the repetitive upper extremity activities performed by appellant caused and contributed to her right carpal tunnel syndrome and de Quervain's tenosynovitis.

By decision dated March 3, 2008, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS -- ISSUE 1

The record supports that on October 18, 2007 appellant picked up a heavy tray of mail and bent while dividing mail into empty trays in the back of a truck. The Board, however, finds that the medical evidence is insufficient to establish that the accepted employment incident caused a back or leg injury.

Dr. Baden's October 19, 2007 report diagnosed a lumbar strain and found that appellant was temporarily totally disabled from October 19 to November 2, 2007. The November 6, 2007 report of a physician whose signature is illegible stated that appellant sustained de Quervain's tenosynovitis and herniated nucleus pulposus of the lumbosacral spine. Appellant was released to return to work on November 7, 2007 with restrictions. This evidence, however, fails to address whether the diagnosed conditions were caused or contributed to by the October 19, 2007 employment incident.

On November 16, 2007 Dr. Baden stated that appellant's right de Quervain's tenosynovitis and right carpal tunnel syndrome were employment related. However, Dr. Baden did not provide any medical rationale explaining how or why the diagnosed conditions were caused by the accepted employment incident.⁹ The Board notes that the claim on appeal pertains to appellant's claim of a low back and leg injury. Therefore, this evidence is not relevant to the October 18, 2007 incident.

Appellant did not submit sufficient medical evidence to establish a causal relationship between her back and leg conditions and the accepted October 18, 2007 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on October 18, 2007. Therefore, she has failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹⁰ the Office's regulation provide that 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.¹¹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for

⁹ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

¹⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(1)-(2).

¹² *Id.* at § 10.607(a).

review of the merits. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 2

By letter dated January 28, 2008, appellant disagreed with the Office's December 18, 2007 decision and requested reconsideration. The issue in the case is whether appellant sustained an injury causally related to the October 18, 2007 employment incident. This is a medical question.

On November 7, 2007 Dr. Baden provided a history of his treatment of appellant's bilateral wrist condition and medical treatment. He reviewed a history that she subsequently sustained a lumbar spine injury and that she was temporarily totally disabled. Dr. Baden also diagnosed a lumbar spine strain. Appellant advised him that her duties as a letter carrier required simple grasping four hours per day, driving a vehicle six hours per day, continuous lifting 10 pounds, and pulling and pushing one hour per day. Dr. Baden noted that it was known that repetitive upper extremity activities could cause and/or contribute to the development of carpal tunnel syndrome and de Quervain's tenosynovitis. He opined that appellant's repetitive upper extremity activities caused and contributed to her right carpal tunnel syndrome and de Quervain's tenosynovitis. However, this evidence is not relevant to the issue of whether appellant sustained a back or leg injury due to the October 18, 2007 employment incident. Dr. Baden did not address the relevant issue of whether appellant's back condition was caused by the accepted employment incident. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹⁴ His comments regarding her upper extremity conditions are not relevant to this claim.

Dr. Baden's December 4, 2007 report stated that appellant sustained de Quervain's tenosynovitis and that she could work eight hours per day, five days per week with restrictions. However, as this evidence is not relevant to her claim for a back or leg injury it does not require reopening appellant's claim for further merit review. Dr. Baden did not address that appellant sustained back and leg injuries causally related to the October 18, 2007 employment incident. His report is not relevant to the issue in this case.¹⁵

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.¹⁶

¹³ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

¹⁴ *D. Wayne Avila*, 57 ECAB 642 (2006).

¹⁵ *Id.*

¹⁶ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury on October 18, 2007 in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2008 and December 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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