

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

D.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 08-1165
Issued: September 10, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 11, 2008 appellant filed a timely appeal from June 18 and July 25, 2007 decisions of the Office of Workers' Compensation Programs, denying her claim for bilateral carpal tunnel syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained bilateral carpal tunnel syndrome in the performance of duty; and (2) whether the Office abused its discretion in denying her request for reconsideration.

FACTUAL HISTORY

On April 10, 2007 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her employment. She did not provide a description of her work duties. Appellant stopped work on that date.

A March 1, 2007 nerve conduction study and electromyography report indicated that appellant had been experiencing bilateral hand tingling and shooting pain for the past several months. Test results and the results of a physical examination were provided. However, no diagnosis or opinion on the cause of her condition was listed.

On April 19, 2007 the Office requested additional evidence including a detailed description of the employment activities which contributed to her bilateral carpal tunnel syndrome and a comprehensive medical report containing a description of her symptoms, the results of examinations and tests and medical rationale explaining how her bilateral carpal tunnel syndrome was causally related to specific factors of her employment. There was no response from appellant.

By decision dated June 18, 2007, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that her bilateral carpal tunnel syndrome was causally related to factors of her employment.

On July 17, 2007 appellant requested reconsideration. She did not submit any additional evidence or argument.

By decision dated July 25, 2007, the Office denied modification of its June 18, 2007 decision.¹

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 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 evidence.² 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 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.³

¹ Subsequent to the July 25, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *Michael S. Mina*, 57 ECAB 379 (2006).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.⁴ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and her medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.⁵

ANALYSIS -- ISSUE 1

The only medical evidence submitted by appellant was a March 1, 2007 nerve conduction study and electromyography report indicating that she had been experiencing bilateral hand tingling and shooting pain for the past several months. The report contained test results and findings on physical examination. However, no diagnosis was provided and no rationalized explanation was given by a physician as to how appellant's condition was causally related to her employment. There is no medical evidence of record with a description of appellant's job duties, a specific diagnosis and medical rationale establishing that the diagnosed condition is causally related to factors of her employment. Therefore, appellant failed to meet her burden of proof to establish that her bilateral carpal tunnel syndrome was caused or aggravated by her job.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act⁶ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by setting forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and new pertinent evidence not previously considered by the Office.⁷ When an application for review of the merits of a claim

⁴ *Donald W. Long*, 41 ECAB 142 (1989).

⁵ *Id.*

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸

ANALYSIS -- ISSUE 2

Appellant submitted no additional evidence or argument in support of her request for reconsideration, nor did she show that the Office erroneously applied or interpreted a specific point of law.

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law, advancing a relevant legal argument not previously considered or constituting relevant and new pertinent evidence not considered previously by the Office. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that her bilateral carpal tunnel syndrome was causally related to factors of her employment. The Board further finds that the Office did not abuse its discretion in denying her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 25 and June 18, 2007 are affirmed.

Issued: September 10, 2008
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

⁸ 20 C.F.R. § 10.608(b).