United States Department of Labor
Employees' Compensation Appeals Board

W.H., Appellant	)	
and	)	**Docket No. 09-840**
	)	**Issued: October 6, 2009**
U.S. POSTAL SERVICE, NORTH METRO PROCESSING & DISTRIBUTION CENTER, Duluth, GA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 9, 2009 appellant filed a timely appeal from a January 2, 2009 decision of the Office of Workers' Compensation Programs denying his claim for an occupational disease and a January 21, 2009 decision denying his request for reconsideration. 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 an injury to his back, lower extremities or upper extremities in the performance of duty; and (2) whether the Office abused its discretion in denying his request for reconsideration.

FACTUAL HISTORY

On October 1, 2008 appellant, then a 44-year-old mail handler, filed an occupational disease claim alleging that he sustained injuries to his lower back, knees, feet and hands due to standing, pushing, lifting and occasional driving activities required in his job. Raymond Rowe, a

coworker, stated that appellant loaded and unloaded mail trucks for eight or more hours a day. The job also required pushing and pulling mail containers.

By letter dated November 25, 2008, the Office asked appellant to submit additional evidence including a comprehensive medical report from his treating physician with a description of symptoms, the results of tests, a diagnosis and a rationalized medical opinion as to how the condition was causally related to factors of his employment.

In a form report dated October 23, 2008, Dr. Stephen A. Dawkins, a Board-certified specialist in preventive medicine, diagnosed bilateral wrist tendinitis, bilateral hand neuropathy and right elbow epicondylitis. He noted that appellant's right carpal tunnel syndrome was diagnosed when he served in the military. The history of injury provided by appellant was that he performed repetitive lifting and pushing in his job. Dr. Dawkins checked the block marked "yes," indicating that the conditions were causally related to appellant's job. In another report dated October 23, 2008, he noted the history given by appellant that he had pain and discomfort from repetitive lifting and pushing in his job. Dr. Dawkins provided findings on physical examination. He did not provide medical rationale explaining the cause of appellant's conditions. In an October 30, 2008 report, Dr. Arlene R. Emmons, a specialist in preventive medicine, stated that appellant continued to have pain, numbness and tingling in his wrists and hands and right elbow pain. She did not provide a medical opinion as to the cause of the conditions.

In a December 9, 2008 report, appellant was seen by an orthopedic surgeon, Dr. Stephen N. Ha, a specialist in family medicine, who provided findings on examination and diagnosed carpal tunnel syndrome. Dr. Ha noted appellant's symptoms, including bilateral wrist pain radiating to the upper arm, numbness, swelling and wrist instability. He stated that there was no apparent precipitating injury. Appellant stated his opinion that his bilateral hand symptoms were due to repetitive movements of his hands at work. Dr. Ha noted, "Possibly related factors include lifting things." He did not provide a medical opinion as to the cause of the condition. A nerve conduction study performed December 9, 2008 revealed mild right median neuropathy at the wrist and moderate left median neuropathy at the wrist.

By decision dated January 2, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that his bilateral carpal tunnel syndrome, bilateral wrist tendinitis, bilateral hand neuropathy or right lateral epicondylitis were causally related to factors of his federal employment.

Appellant requested reconsideration. He did not submit any additional evidence or argument. By decision January 21, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[1] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[2]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship.[3]

ANALYSIS -- ISSUE 1

Dr. Dawkins diagnosed bilateral wrist tendinitis, bilateral hand neuropathy and right elbow epicondylitis. He noted that appellant's right carpal tunnel syndrome was first diagnosed when he served in the military. The history provided by appellant was that he performed repetitive lifting and pushing in his job. Dr. Dawkins checked the block marked "yes," indicating that the conditions were causally related to appellant's job. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form report is of diminished probative value on the issue of causal relationship.[4] Dr. Dawkins did not provide medical rationale explaining the cause of appellant's conditions. Therefore, his reports are not sufficient to establish that appellant sustained a work-related injury to his upper extremities. Dr. Emmons stated that appellant had pain, numbness and tingling in his wrists and hands and right elbow pain. However, she did not provide a medical opinion as to the cause of the conditions. Therefore, Dr. Emmons' report is insufficient to establish an employment-related medical condition.

[1] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[2] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[3] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[4] *See Gary J. Watling*, 52 ECAB 278, 280 (2001).

Dr. Ha provided findings on examination and diagnosed carpal tunnel syndrome. He noted appellant's symptoms, including bilateral wrist pain radiating to the upper arm, numbness, swelling and wrist instability. Appellant stated that his bilateral hand symptoms were due to repetitive movements of his hands at work. This is his opinion on causal relationship, not the physician's. Dr. Ha noted, "Possibly related factors include lifting things." The opinion of a physician must be one of reasonable medical certainty and not speculative. Dr. Ha did not provide a medical opinion as to the cause of appellant's condition based on a complete and accurate factual and medical background and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant. Therefore, Dr. Ha's report is not sufficient to establish that appellant sustained a work-related injury to his upper extremities.

The Board notes that on November 25, 2008 the Office advised appellant of the evidence necessary to establish his claim, including a comprehensive medical report containing a description of his symptoms, the results of tests and medical rationale explaining how the diagnosed conditions were caused or aggravated by specific factors of his employment. Appellant did not submit such medical evidence. Accordingly, the Office properly denied his claim for an occupational injury.

With his appeal to the Board, appellant submitted additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time it issued its final decision.[5] The Board may not consider new evidence for the first time on appeal.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act[6] does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[7] The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[8]

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[9] 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.[10] To be entitled to a merit

[5] *See* 20 C.F.R. § 501.2(c).

[6] 5 U.S.C. §§ 8101-8193.

[7] *Id.* at § 8128(a).

[8] *Annette Louise*, 54 ECAB 783, 789-90 (2003).

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

[10] 20 C.F.R. § 10.606(b)(2).

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.[11] 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.[12]

ANALYSIS -- ISSUE 2

Appellant did not submit any additional evidence or argument to the Office with his request for reconsideration. Because appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained injuries to his upper extremities in the performance of duty. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

[11] *Id.* at § 10.607(a).

[12] *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21 and 2, 2009 are affirmed.

Issued: October 6, 2009
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