

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

C.A., Appellant)	
)	
and)	Docket No. 09-624
)	Issued: September 9, 2009
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, OK, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 2, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 7, 2008 finding that he had not established carpal tunnel syndrome due to his federal employment and a nonmerit decision dated April 30, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed bilateral carpal tunnel syndrome due to his federal job duties; and (2) whether the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 22, 2008 appellant, then a 48-year-old aircraft mechanic, filed an occupational disease claim alleging that he developed carpal tunnel syndrome as well as

numbness in his fingers, wrists, elbows, lower back and neck due to working with hand tools. He first became aware of his condition on November 2, 2007 and first attributed it to his employment on December 2, 2007.

In a letter dated February 26, 2006, the Office requested additional factual and medical evidence in support of appellant's claim and allowed 30 days for a response. In a note dated November 20, 2007, Dr. Timothy J. Moser, an osteopath, mentioned that appellant was an aircraft mechanic and diagnosed carpal tunnel syndrome. He examined appellant on December 4, 2007 and diagnosed tendinitis/carpal tunnel syndrome. It is unclear as to whether he believed the injury was work related.

By decision dated April 7, 2008, the Office denied appellant's claim on the grounds that he failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his employment duties.

Appellant requested reconsideration on April 14, 2008. In a report dated April 1, 2008, Dr. Mehdi N. Adham, a Board-certified hand surgeon, examined appellant and diagnosed bilateral carpal tunnel syndrome. On April 22, 2008 Dr. Adham diagnosed bilateral carpal tunnel syndrome without reference as to its etiology.

By decision dated April 30, 2008, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit relevant new evidence in support of his request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.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 a 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. The medical opinion 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

ANALYSIS -- ISSUE 1

Appellant alleged that he developed bilateral carpal tunnel syndrome due to working with hand tools in the course of his federal employment. In support of his claim, he submitted a report dated November 20, 2007 from Dr. Moser, an osteopath, who diagnosed carpal tunnel

¹ 20 C.F.R. § 10.5(q).

² *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

syndrome. Appellant has submitted medical evidence establishing the presence of a disease, carpal tunnel syndrome and he has also submitted a factual statement identifying the employment factors which he felt caused or contributed to his condition. However, the Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between his condition and his implicated employment factors.

In a note dated December 4, 2007, Dr. Moser diagnosed tendinitis/carpal tunnel syndrome. He did not offer any explanation or medical reasoning in support of his opinion that there was a causal relationship between appellant's diagnosed condition and his employment duties. Without medical reasoning explaining why he may believe that appellant's carpal tunnel was due to his employment duty of working with hand tools, Dr. Moser's report is not sufficiently rationalized to meet appellant's burden of proof. The Board finds therefore that the Office properly denied appellant's claim for carpal tunnel syndrome.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ 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.⁵

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's April 7, 2008 decision on April 14, 2008. In support of his request, he submitted a report dated April 1, 2008 and a note dated April 22, 2008 from Dr. Adham, a Board-certified hand surgeon, both documents diagnosed bilateral carpal tunnel syndrome. These reports are not relevant to the issue for which the Office denied appellant's claim, the lack of medical rationale supporting a causal relationship between his accepted employment duties of working with hand tools and his established diagnosis of carpal tunnel syndrome. As these reports did not provide relevant and pertinent new evidence, the Board finds that the Office properly declined to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that appellant failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between his diagnosed condition and his employment

³ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

duties. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on April 30, 2008.

ORDER

IT IS HEREBY ORDERED THAT the April 30 and 7, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 9, 2009
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