



## **FACTUAL HISTORY**

On March 12, 2008 appellant, then a 45-year-old customer service representative, filed an occupational disease claim alleging that she developed asthma, carpal tunnel syndrome and rheumatoid arthritis as a result of constant colds and bronchitis caused by outside irritants and the cold building temperatures. She submitted a series of emergency room notes dated from September 19, 2006 through October 10, 2007 diagnosing coughs, difficulty breathing, sore throat, allergic reactions and asthmatic bronchitis.

In a letter dated April 4, 2008, the Office requested additional factual and medical evidence in support of appellant's claim and gave her 30 days to respond. In a report dated January 17, 2008, Dr. Sylvie I. Cohen, a physician Board-certified in occupational medicine, reviewed appellant's various diagnoses and recommended a hepa filtered air purifier. Dr. Liliane Min, a Board-certified rheumatologist, completed a note on May 1, 2008 diagnosing rheumatoid arthritis, carpal tunnel syndrome and asthma. She noted that prolonged sitting and standing as well as exposure to cold ventilation exacerbated appellant's conditions. Dr. Min stated that appellant's carpal tunnel syndrome was also exacerbated by repetitive wrist motions. In a note dated May 19, 2008, Dr. David J. Sevitski, an osteopath, diagnosed allergic asthma, rheumatoid arthritis, reflux, carpal tunnel syndrome and bladder detrusor instability. Appellant submitted answers to the Office's questions noting that she was exposed to cold air from vents, colognes, perfumes, aerosols such as Deets.

By decision dated June 26, 2008, the Office accepted that appellant was exposed to cold temperatures at the employing establishment in the performance of duty. However, it found that appellant had not submitted the necessary medical evidence to establish a causal relationship between her accepted employment exposure and her diagnosed conditions.

Appellant, through her attorney, requested reconsideration of the denial of left carpal tunnel syndrome on September 17, 2008. On September 22, 2008 she submitted her job requirements including typing for at least eight hours a day, occasional lifting and answering the telephone. Appellant submitted medical evidence that she had right carpal tunnel syndrome and that Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon, performed corrective surgery on May 28, 2008. She underwent an electromyography and nerve conductions velocity testing in February 2008 which revealed prolonged median latencies at the wrists and increased findings for left carpal tunnel syndrome.

By decision dated December 19, 2008, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that she did not submit relevant new evidence or legal argument in support of her 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.<sup>1</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 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.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

In support of her claim for an occupational disease resulting in the varied conditions of asthma, carpal tunnel syndrome and rheumatoid arthritis, appellant submitted factual evidence that she was exposed to cold temperatures in the performance of her federal job duties. The Office accepted this exposure as factual. Appellant also submitted diagnoses of the conditions of rheumatoid arthritis, carpal tunnel syndrome and asthma as well as carpal tunnel syndrome. The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her accepted employment factor.

Appellant submitted several medical reports in support of her various medical conditions. On January 17, 2008 Dr. Cohen, a physician Board-certified in occupational medicine, reviewed appellant's various diagnoses and recommended a hepa filtered air purifier. Dr. Sevitski, an osteopath, completed a report on May 19, 2008 and diagnosed allergic asthma, rheumatoid arthritis, reflux, carpal tunnel syndrome and bladder detrusor instability. These reports are not sufficient to meet appellant's burden of proof as neither physician offered an opinion on the causal relationship between appellant's diagnoses and her accepted employment exposure to cold.

In a note dated May 1, 2008, Dr. Min, a Board-certified rheumatologist, diagnosed rheumatoid arthritis, carpal tunnel syndrome and asthma. She stated that prolonged sitting and standing as well as exposure to cold ventilation exacerbated appellant's conditions. Dr. Min stated that appellant's carpal tunnel syndrome was also exacerbated by repetitive wrist motions. She did not provide any medical reasoning to explain how and why she believed that appellant's excepted exposure to cold would exacerbate rheumatoid arthritis, asthma or carpal tunnel syndrome. Without medical rationale in support of her opinion regarding a temporary aggravation, this report is not sufficient to meet appellant's burden of proof. Appellant did not claim that she engaged in repetitive wrist movements and Dr. Min did not describe the specific movements involved or offer any medical explanation of how such movements would exacerbate

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

appellant's diagnosed carpal tunnel syndrome. For these reasons, this report is not sufficient to meet appellant's burden of proof.

### **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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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

Appellant requested reconsideration on September 17, 2008. In the letter from her attorney, she indicated that she was limiting this request to her claim for left carpal tunnel syndrome. In support of the request for reconsideration, appellant submitted her duties including typing for at least eight hours a day, occasional lifting and answering the telephone. She submitted medical evidence that Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon, performed corrective surgery for right carpal tunnel syndrome on May 28, 2008. Appellant underwent an electromyography and nerve conduction velocity testing in February 2008 which revealed prolonged median latencies at the wrists and increased findings for left carpal tunnel syndrome.

The Board finds that appellant has submitted relevant and pertinent new evidence regarding her claim for left carpal tunnel syndrome. Appellant has implicated additional employment duties other than cold, which the Office has not considered or accepted as causing or contributing to her carpal tunnel syndrome. The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specify that the evidence be relevant and pertinent and not previously considered by the Office.<sup>6</sup> As the Office has not considered whether appellant has substantiated that she was required to type for eight hours a day, this constitutes additional relevant and pertinent new evidence in this claim which requires review of the merits.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Donald T. Pippin*, 54 ECAB 631 (2003).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she developed or sustained an aggravation of her asthma, rheumatoid arthritis or carpal tunnel due to exposure to cold in the performance of her federal job duties. The Board further finds that the Office improperly refused to reopen appellant's claim for consideration of the merits on December 19, 2008. On remand, the Office should conduct a merit review based on appellant's September 17, 2008 request for reconsideration and issue an appropriate decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2008 decisions of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this decision of the Board. The June 26, 2008 decision is affirmed.

Issued: September 29, 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