

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

T.P., Appellant

and

**U.S. POSTAL SERVICE, LONGVIEW POST
OFFICE, Longview, WA, Employer**

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**Docket No. 09-1283
Issued: February 4, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 20, 2009 appellant filed a timely appeal from a May 23, 2008 merit decision of the Office of Workers' Compensation Programs denying her occupational disease claim and a March 24, 2009 decision denying merit review. 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 established that she sustained an injury causally related to the factors of her federal employment; and (2) whether the Office properly denied appellant's request for reconsideration of the merits of the claim pursuant 5 U.S.C. § 8128(a).

On appeal, appellant contends that along with her request for reconsideration, she submitted additional notes from her treating physician.

FACTUAL HISTORY

On November 19, 2007 appellant, then a 45-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome due to the constant repetitive use of her right hand while keyboarding and using a touch screen. She also claimed that, during her career with the employing establishment, she performed duties requiring repetitive movements of her hands and wrists, including hashing, sorting, boxing and working as a window and bulk mail clerk.

By letter dated November 21, 2007, the Office notified appellant of the deficiencies in her claim and requested that she submit additional factual and medical evidence.

In a November 7, 2007 medical report, Dr. Jon E. Kretzler, a Board-certified orthopedic surgeon, stated that appellant was experiencing symptoms in her right and left hands and wrists including volar wrist pain and numbness or tingling in her hands. Appellant reported that her symptoms could be associated with the repetitive use of her hands while keyboarding and stamping and that her position requires heavy repetitive use of her hands and fingers. She did not note any hobbies that might have caused or exacerbated the symptoms. Physical examination showed a mildly positive Tinel's sign on the right, generally good sensation to light touch in the median and ulnar nerve distributions and good range of motion of the hand, wrist and fingers. Dr. Kretzler diagnosed possible carpal tunnel syndrome of the right wrist and recommended a nerve conduction study. In a November 26, 2007 medical report, he noted appellant's hand and wrist pain and recommended nerve conduction studies to evaluate for any median nerve compression.

By decision dated December 26, 2007, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence containing a firm diagnosis.

On January 29, 2008 appellant filed a request for a review of the written record by an Office hearing representative.

A January 11, 2008 electromyography (EMG) report revealed mild distal median neuropathy at the right and left wrists, potentially indicating mild carpal tunnel syndrome. There was no other evidence of a generalized sensorimotor polyneuropathy affecting appellant's upper extremities.

By decision dated May 23, 2008, an Office hearing representative affirmed the December 26, 2007 decision. He found that, although the EMG report provided a firm diagnosis of carpal tunnel syndrome, appellant did not submit a rationalized medical report establishing that the carpal tunnel syndrome was related to her employment duties.

On January 6, 2009 appellant filed a request for reconsideration. She stated that she was including a letter from Dr. Kretzler providing his opinion as to the cause of her carpal tunnel syndrome.¹

¹ This letter was not included with appellant's reconsideration request.

By decision dated March 24, 2009, the Office denied appellant's request for reconsideration on the grounds that she did not submit any new evidence relevant to the medical issue of whether she sustained carpal tunnel syndrome due to her employment duties.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,³ including that she is an "employee" within the meaning of the Act⁴ and that she filed her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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.⁸

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS -- ISSUE 1

The issue is whether appellant established that she sustained bilateral carpal tunnel syndrome as a result of performing repetitive hand and wrist duties during her federal employment. The Board finds she has not met her burden of proof.

In support of her claim, appellant submitted medical reports from Dr. Kretzler. On November 7, 2007 Dr. Kretzler stated that appellant was experiencing bilateral hand and wrist pain and numbness. He relayed her belief that the symptoms could be associated with repetitive use of her hands while keyboarding and stamping. Appellant reported that her position required heavy repetitive use of her hands and fingers. Dr. Kretzler diagnosed possible carpal tunnel syndrome of the right wrist. Further, in a November 26, 2007 medical report, he recommended nerve conduction studies to evaluate any median nerve compression.

Dr. Kretzler did not provide a firm diagnosis of a compensable condition but only provided a speculative diagnosis of carpal tunnel syndrome. He recommended further testing to confirm the condition.⁹ Dr. Kretzler did not provide a rationalized medical opinion addressing the cause of appellant's wrist and hand condition.¹⁰ Although he reported appellant's belief that her condition was related to repetitive duties at work, this does not constitute a well-reasoned medical opinion on causation. Mere repetition of appellant's belief that her employment caused or aggravated her condition is not sufficient to establish causal relationship.¹¹

The only other relevant medical evidence of record is a January 11, 2008 EMG report revealing mild distal median neuropathy at the right and left wrists. As this is only a diagnostic report and does not address causation, it is of diminished probative value.¹²

The Board finds that appellant did not establish that she sustained carpal tunnel syndrome due to her federal employment duties.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹³ 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.¹⁴ To be entitled to

⁹ See *Claudio Vazquez*, 52 ECAB 496 (2001).

¹⁰ See *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008).

¹¹ See *Joseph T. Gulla*, 36 ECAB 516 (1985).

¹² See *Conrad Hightower*, 54 ECAB 796 (2003).

¹³ 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).

¹⁴ 20 C.F.R. § 10.606(b)(2).

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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

The issue is whether the Office properly refused to reopen appellant's case under 5 U.S.C. § 8128(a). The only document appellant submitted subsequent to the May 23, 2008 decision was her letter requesting reconsideration. Appellant did not submit any new and relevant evidence, nor did she advance a relevant legal argument or show that the Office erroneously applied or interpreted a specific point of law. Therefore, the Board finds that she did not meet the standards set forth under 5 U.S.C. § 8128(a) and the Office properly denied merit review.¹⁷

On appeal, appellant contends that she submitted notes from her treating physician together with her request for reconsideration. Although she noted in the January 6, 2009 reconsideration request that she was enclosing additional medical evidence, the record does not show any evidence accompanying the letter. As the record does not contain any new evidence submitted subsequent to the May 23, 2008 decision, the Board finds that the Office properly declined to reopen the case.¹⁸

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury causally related to factors of her federal employment. The Board also finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹⁵ *Id.* at § 10.607(a).

¹⁶ *Id.* at § 10.608(b).

¹⁷ *See E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009).

¹⁸ The Board notes that, if appellant has additional medical evidence from her treating physician, she may submit this evidence to the Office along with a formal, written request for reconsideration under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2009 and May 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board