

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

A.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer

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**Docket No. 09-1394
Issued: January 13, 2010**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 6, 2009 appellant filed a timely appeal of a March 26, 2009 decision of the Office of Workers' Compensation Programs denying her request for reconsideration without a merit review. Because more than one year has elapsed from the last merit decision dated February 22, 2008 to the filing of this appeal, the Board lacks jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without further merit review.

FACTUAL HISTORY

On December 20, 2007 appellant, then a 43-year-old window/distribution clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome from her employment activities. She stopped work on June 20, 2006 for a back condition unrelated to the

present claim and retired on medical disability on August 13, 2007. The employing establishment controverted the claim.

On January 9, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim. It allowed her 30 days to submit such evidence.

In a February 4, 2008 statement, appellant indicated that she worked at the employing establishment from 1986 to June 20, 2006. Her entire career at the employing establishment required repetitive hand motion. Appellant noted that her window clerk duties consisted of repetitive opening and closing a cash drawer, reaching to push buttons on window terminals and typing. She stated that her treating physician diagnosed carpal tunnel syndrome.

In a November 30, 2007 report, Dr. Louis Talbert, a Board-certified internist, noted appellant's complaint of bilateral shoulder and wrist pain and numbness in all fingers. He diagnosed bilateral carpal tunnel syndrome. On December 17, 2007 Dr. Talbert noted that an electromyogram (EMG) confirmed mild bilateral carpal tunnel syndrome. A December 7, 2007 EMG report from Dr. Mark Cunningham, a Board-certified physiatrist, revealed mild bilateral carpal tunnel syndrome and no evidence of peripheral neuropathy or ulnar nerve compression across the elbow in either upper extremity. In a February 5, 2008 report, Dr. Mark Jobe, a Board-certified orthopedic surgeon, noted appellant's complaint of bilateral intermittent numbness in both hands and pain when using her hands. He diagnosed bilateral carpal tunnel syndrome and left index retinacular ganglion cyst.

In a February 22, 2008 decision, the Office denied appellant's claim finding that she did not establish that the claimed carpal tunnel condition was related to her work-related activities.

On February 11, 2009 appellant, through her representative, requested reconsideration asserting that the Office's decision should be vacated based on appellant's statement and the EMG test results.

In an undated statement, appellant indicated that in April 2006 she informed a coworker that her hands and arms hurt from pulling a cash drawer open. In May 2006, the Office approved her back surgery related to an injury claimed three years prior. Appellant stated that her last day of work was on June 20, 2006 and she underwent back surgery on June 21, 2006. She did not return to work following surgery and retired on medical disability on August 13, 2007. However, after stopping work, appellant's hand pain increased. She advised that Dr. Talbert diagnosed carpal tunnel syndrome but could not definitively say it was work related. Appellant further advised that Dr. Jobe did not address whether her carpal tunnel syndrome was work related. In another undated statement, she reiterated that she informed a coworker of her hand and arm pain from opening and closing drawers at work. Appellant described her work duties as a window clerk. She reiterated that she left work on June 20, 2006 for back surgery and did not return.

In a March 26, 2009 decision, the Office denied appellant's reconsideration request without a merit review finding that she did not submit relevant evidence or argument to the issue of causal relationship.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), the Office 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.¹ Section 10.608(b) of the Office regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

ANALYSIS

In support of her reconsideration request, appellant submitted two statements that described her job duties as a window clerk and how they contributed to her bilateral carpal tunnel syndrome. She noted undergoing back surgery for an unrelated claim, which prohibited her from returning to work. While these statements note aspects of appellant's work and medical history, she did not submit any new medical evidence on reconsideration. This is particularly important as the underlying issue is medical in nature regarding the causal relationship of her employment duties and whether they caused or aggravated her diagnosed bilateral carpal tunnel syndrome. Appellant's statements are not relevant to the underlying medical issue and do not constitute relevant or pertinent new evidence not previously considered by the Office.³

Although appellant's attorney asserted that her reconsideration request was based on the EMG test results, appellant, as noted did not submit any new medical evidence in support of this assertion. The Board notes that the Office previously considered the EMG report as it was in the record prior to the February 22, 2008 merit decision.⁴ Appellant did not show that the Office erroneously applied or interpreted a point of law nor did she advance a new and relevant legal argument.

For these reasons, the Office properly denied appellant's reconsideration request without a merit review.

¹ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

² *K.H.*, 59 ECAB ____ (Docket No. 07-2265, issued April 28, 2008).

³ *See E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009) (where the Board held that new evidence submitted upon a reconsideration request that does not address the pertinent issue is not relevant evidence); *Freddie Mosley*, 54 ECAB 255 (2002).

⁴ *See C.N.*, 60 ECAB ____ (Docket No. 08-1569, issued December 9, 2008) (evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 26, 2009 is affirmed.

Issued: January 13, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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