



On November 16, 2006 appellant, then a 45-year-old medical technologist, filed an occupational disease claim alleging that on January 19, 2006 she was exposed to and tested positive for tuberculosis (TB). The Office accepted the claim for a reaction to TB test without active TB. Appellant was provided medication for an appropriate period of time. There is no indication that appellant lost any time from work due to her positive TB test. Appellant resigned from the employing establishment on December 16, 2007.

In a November 13, 2006 report, Dr. Robert C. Barnes, Board-certified in infectious diseases, noted treating appellant for latent tuberculosis. He indicated that she had no symptoms related to this. A January 23, 2006 chest x-ray was normal.

On January 25, 2009 appellant filed a Form CA-7 requesting disability compensation for 50 hours for the period January 7 to 17, 2009. In an accompanying January 29, 2009 time analysis form, she claimed compensation for January 7, 11, 12, 13 and 14, 2009. Medical evidence relevant to the claimed time period included reports from Dr. Eileen Bailey, a Board-certified internist. In a January 12, 2009 report, Dr. Bailey advised that appellant was seen on January 9, 2009. She asked that appellant be excused from work for "medical reasons" until January 14, 2009. In a January 16, 2009 report, Dr. Bailey reiterated that appellant was seen on January 9, 2009. She requested that appellant be excused from work for "medical reasons" January 7 to 17, 2009.

In a February 10, 2009 letter, the Office advised appellant that the medical evidence was insufficient as Dr. Bailey had not provided a diagnosis of her condition and an opinion with medical rationale as to whether her condition was related to the accepted reaction to the TB test in 2006. Appellant was accorded 30 days within which to provide medical evidence to the claimed period.

In a January 9, 2009 outpatient clinic note, Dr. Bailey indicated that appellant had an onset of upper respiratory symptoms four days earlier and that appellant had been seen in gynecology for gynecological problems. She indicated that rapid strep test was negative and hormonal therapy was discussed for appellant's gynecological problems.

By decision dated March 11, 2009, the Office denied appellant's claim for disability compensation for 50 hours during the period January 7 to 14, 2009. It found that the evidence was insufficient to show that appellant was disabled for work during the claimed period due to the January 19, 2006 work injury.

Appellant requested reconsideration. In a July 2, 2009 letter, she stated that she was entitled to seek medical treatment for any short illness related to respiratory health that may put her at risk of the latent TB becoming active. Medical reports from Dr. Bailey were submitted along with a March 20, 2009 x-ray of her right ring finger. In a March 20, 2009 note amended on March 23, 2009, Dr. Bailey noted appellant's complaints about fatigue since her upper respiratory illness and other concerns. She stated that appellant's prolonged upper respiratory infection was most likely viral and it was most likely not latent TB causing the upper respiratory infection symptoms. Dr. Bailey explained that people of any age, if they have latent TB, are not likely to get upper respiratory infections.

In a July 3, 2009 report, Dr. Bailey noted that appellant had a history of TB exposure. She agreed that an evaluation was needed when appellant had concerns and symptoms of active TB and noted that appellant had come in for evaluation when she had ongoing cough and fatigue.

By decision dated July 30, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of her claim.

### **LEGAL PRECEDENT -- ISSUE 1**

The term disability as used in the Federal Employees' Compensation Act<sup>1</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>2</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>4</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>5</sup>

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>6</sup>

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

The Office accepted appellant's claim for reaction to TB test without active TB. Appellant requested compensation for 50 hours of disability for the period January 7 to 14, 2009 based on her upper respiratory problems. On February 10, 2009 the Office advised appellant of the evidence needed to establish her claim. Appellant, however, did not submit sufficient reasoned evidence to establish that her disability for the hours claimed was causally related to her accepted condition. She did not submit a medical report in which a treating physician adequately explained how her disability was related to the accepted condition.

In her disability notes of January 12 and 15, 2009, Dr. Bailey related the cause of her disability to unspecified medical reasons. She did not address what the medical reasons were or whether they were causally related to the accepted injury. Therefore, Dr. Bailey's reports are of limited probative value and are insufficient to establish appellant's disability. While she advised

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>2</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>3</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>4</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007).

<sup>6</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

in her January 9, 2009 clinic note that appellant had an onset of respiratory symptoms four days earlier, she did not provide an opinion or address whether appellant's upper respiratory symptoms were causally related to the accepted condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup> Thus, Dr. Bailey's January 9, 2009 note is insufficient to establish appellant's alleged disability as noted in her disability notes of January 12 and 15, 2009.

In the instant case, none of the medical reports submitted by appellant contain a rationalized opinion explaining why her disability for the hours claimed was causally related to her accepted employment condition. Thus, appellant has not met her burden of proof.

### **LEGAL PRECEDENT -- ISSUE2**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>8</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>9</sup> To be entitled to 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.<sup>10</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>11</sup>

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

Appellant's reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. While appellant argued that she was entitled to seek medical treatment for any short illness related to respiratory health that may put her at risk of the latent TB becoming active, her assertion is insufficient to require the Office to conduct a merit review as the prior decision did not pertain to entitlement to medical treatment but addressed whether she had employment-related disability on claimed dates in January 2009.<sup>12</sup> Furthermore, the underlying issue of whether appellant had compensable

---

<sup>7</sup> See *K.W.*, 59 ECAB \_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>8</sup> 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).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> *Id.* at § 10.607(a).

<sup>11</sup> *Id.* at § 10.608(b).

<sup>12</sup> This decision does not preclude appellant from seeking authorization of appropriate treatment for the condition accepted by the Office.

disability is a medical issue that must be addressed by relevant medical evidence. Consequently, appellant had not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office.

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. The additional reports from Dr. Bailey, while new, are not relevant because they fail to address the relevant underlying issue of whether appellant had any disability causally related to her accepted condition from January 7 to 14, 2009. In her March 20, 2009 note amended March 23, 2009, Dr. Bailey specifically discounted any medical connection between appellant's conditions and the accepted work condition. She opined that appellant's prolonged upper respiratory infection was most likely viral and not caused by latent TB. Dr. Bailey explained that people of any age, if they have latent TB, are not likely to get upper respiratory infections. She did not specifically address disability during the claimed period. In her July 3, 2009 letter, Dr. Bailey agreed that appellant should be evaluated when she had concerns and symptoms of active tuberculosis. She also indicated that appellant came in for evaluation when she had ongoing cough and fatigue. However, Dr. Bailey did not indicate whether appellant had a possible onset of active tuberculosis during the claimed period of disability. Thus, her report is not relevant to the issue at hand.

The x-ray report of the right ring finger, while new, does not address the period of disability claimed or offer a specific opinion on causal relationship and it is irrelevant to the issue on reconsideration.

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly denied a merit review of her claim.

On appeal, appellant asserts that the medical reports she submitted on reconsideration were different and that it was important that she be able to seek medical treatment for upper respiratory conditions. As noted, the medical reports submitted on reconsideration, while new, are not relevant to the underlying issue of whether appellant had disability due to her accepted condition for the claimed period. Furthermore, the matter of continuing medical treatment was not addressed by the Office's decisions such that the Board does not have present jurisdiction over this matter.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish her claim for disability compensation for 50 hours for the period January 7 to 14 2009. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

---

<sup>13</sup> See 20 C.F.R. § 501.2(c). Appellant also submitted new evidence on appeal. However, the Board may not consider such evidence on appeal as its review is limited to evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated July 30 and March 11, 2009 are affirmed.

Issued: July 1, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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