United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 09-1591**
	)	**Issued: March 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 8, 2009 appellant filed a timely appeal from the August 22, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation and a May 27, 2009 decision denying his reconsideration request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained an injury causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for further review of the merits of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On June 11, 2008 appellant, then a 67-year-old electronic technician, filed an occupational disease claim (Form CA-2) alleging that the various positions he held during his 33 years of employment caused or aggravated his bilateral carpal tunnel condition. His work involved the use of tools to maintain equipment, driving over 20,000 miles a year, constant turning of wrenches, pulling belts and keying. Appellant first realized his condition was caused

or aggravated by his employment May 1, 2008. He first received medical care for his condition on June 11, 2008. Appellant did not stop work.

Appellant submitted a position description and a maintenance checklist which described various duties when servicing equipment. In a July 2, 2008 letter, Norm Dowell, manager of maintenance, noted that appellant was claiming bilateral carpal tunnel due to his repetitive work as a maintenance employee. He also noted that appellant bowled.

In a June 11, 2008 report, Dr. Lawrence P. Shank, a Board-certified orthopedic surgeon, advised that appellant's electromyogram (EMG) was positive for severe bilateral carpal tunnel syndrome and surgery was warranted. He also diagnosed osteoarthritis of the left knee.

In a July 14, 2008 letter, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the evidence needed to establish his claim, including a comprehensive medical report from a treating physician, which listed symptoms, a diagnosis and an opinion as to the cause of the diagnosed condition. No further evidence was received.

By decision dated August 22, 2008, the Office denied appellant's claim finding that the evidence was insufficient to establish that the claimed bilateral carpal tunnel syndrome was causally related to the accepted work-related events.[1]

On May 5, 2009 appellant disagreed with the August 22, 2008 decision and requested reconsideration. A May 22, 2008 electrodiagnostic study of the upper extremities was read by Dr. Jacek Sobczak, a Board-certified neurologist, who opined that there was severe bilateral median neuropathy at the wrist and no electrical evidence of radiculopathy, plexopathy, neuropathy and myopathy.

In a March 10, 2009 report, Dr. Frank J. Raia, a hand surgeon, provided a history of bilateral hand pain and numbness for several years. He noted that appellant worked at the employing establishment performing maintenance work with tools and had driven 20,000 miles a year to perform his work. Appellant stated that he had problems with his equipment and this bilateral hand pain. He also related that the driving bothered him. Dr. Raia provided findings on examination and diagnosed bilateral carpal tunnel syndrome. He noted that appellant was claiming that his condition occurred at work from using tools and driving and that appellant indicated that he wanted to process the matter through workers' compensation.

By decision dated May 27, 2009, the Office denied his request for reconsideration on the grounds that the evidence submitted was irrelevant to the issue at hand and thus insufficient to warrant further review of the merits of the case.

[1] The Office accepted that appellant's position as an electronic technician involved assembling, disassembling, removal, modification, repair, etc., using tools.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged,[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 the 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.[6] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e*., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant's position as an electronic technician involved assembling, disassembling, removal, modification and repair with the use of tools. However, appellant did not submit sufficient medical evidence to establish that his bilateral carpal tunnel condition is causally related to his employment duties. On July 14, 2008 the Office advised appellant of the medical evidence needed to establish his claim.

In a June 11, 2008 report, Dr. Shank diagnosed bilateral carpal tunnel condition and indicated surgery was warranted. This report did not provide any history of injury or address

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (Occupational Disease or Illness and Traumatic Injury Defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Gary J. Watling*, 52 ECAB 357 (2001).

[6] *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

how appellant's employment activities caused or aggravated the diagnosed medical condition.[8] Dr. Shank did not explain how the particular work factor accepted by the Office would cause or contribute to diagnosed carpal tunnel syndrome.

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[9] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit evidence supporting that his work as an electronic technician caused or contributed to his bilateral carpal tunnel condition. Accordingly, he has failed to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that 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.[11] 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.[12] 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.[13]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[14] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[15] While the reopening of a case may be predicated

[8] *A.D.*, 58 ECAB 149 (2006) (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).

[9] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas, supra* note 4 at 218.

[10] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that [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.

[11] 20 C.F.R. § 10.606(b)(2).

[12] *Id.* at § 10.607(a).

[13] *Id*. at § 10.608(b).

[14] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[15] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[16]

ANALYSIS -- ISSUE 2

By decision dated August 22, 2008, the Office denied appellant's claim for compensation. Appellant disagreed with the decision and requested reconsideration. The underlying issue is whether there is a causal relationship between appellant's claimed bilateral carpal tunnel syndrome and his work as an electronic technician. To be relevant, the evidence submitted in support of appellant's request for reconsideration must address that issue.

Appellant's request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second under section 10.606(b)(2).

Appellant submitted a May 22, 2008 electrodiagnostic study of the upper extremities. Dr. Sobczak did not provide any opinion regarding the cause of the bilateral median neuropathy. This report, while new, is not relevant to the issue of causal relationship. The March 10, 2009 medical report of Dr. Raia diagnosed bilateral carpal tunnel syndrome. Dr. Sobczak noted that appellant was claiming that his medical condition was work related due to the use of tools and driving and that he was planning on pursuing the matter through the workers' compensation process. Dr. Raia did not provide any opinion addressing the cause of the bilateral carpal tunnel syndrome. He merely noted appellant's belief concerning the cause of appellant's condition. Dr. Raia did not express his own medical opinion. His report, while new, is not relevant to the issue in this case. As noted, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[17] Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

On appeal appellant indicated that he does not understand why his claim should be denied based on the fact a doctor did not offer an opinion that his job caused his condition. His burden is to establish that the accepted employment activities caused injury. As noted, causal relationship is an issue that can only be rationalized medical opinion evidence.[18] Appellant further asserted that he does not know what to do if he cannot offer new evidence on appeal. The Board notes that he may submit any new evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

[16] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[17] *Ronald A. Eldridge*, *supra* note 15.

[18] *See supra* note 7.

CONCLUSION

The Board finds that appellant did not establish his claim of bilateral carpal tunnel syndrome. The Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2009 and August 22, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: March 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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