

noted clinical findings of carpal tunnel syndrome and cervical radiculopathy. She opined that appellant was able to work full time without restrictions.

On June 7, 2007 the Office advised appellant of the factual and medical evidence needed to establish her claim. Appellant thereafter submitted physical therapy notes from May 29 to 31, 2007.

In a July 10, 2007 decision, the Office denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish that appellant sustained an injury in the performance of duty.

On July 17, 2007 appellant requested a review of the written record. In an undated statement, she asserted that her claimed condition was due to lifting heavy tubs of mail daily and casing letters and flats which required constant movement of the hands and fingers for 40 hours per week. Appellant also carried a mail satchel which caused a pinched nerve in her neck. She submitted reports from Dr. Adams dated January 17 to July 2, 2007 for treatment of intermittent paresthesia in the hands involving all her fingers and neck pain. Dr. Adams diagnosed acute paresthesia and insomnia due to anxiety and fatigue and depression. In a July 2, 2007 attending physician's report, she diagnosed bilateral carpal tunnel syndrome and right cervical radiculopathy. Dr. Adams noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and indicated that appellant was a letter carrier who sorted mail. She advised that appellant could continue working. On February 28, 2007 appellant was seen in consultation with Dr. Luz S. Ruiz, a Board-certified neurologist, for numbness and weakness in her hands with neck pain. Dr. Ruiz diagnosed bilateral shoulder pain associated with intermittent numbness, paresthesias and weakness in her hands and the possibility of bilateral cervical radiculopathy versus carpal tunnel syndrome. On April 11, 2007 he noted that an April 2, 2007 electromyogram revealed moderate bilateral median neuropathies as seen in carpal tunnel syndrome predominately on the left side superimposed on mild and chronic lower cervical and upper thoracic radiculopathy on the right side. Dr. Ruiz noted that appellant's duties as a letter carrier could be contributory to her radiculopathy but not the cause of her condition. Appellant submitted physical therapy notes from April 17 to May 31, 2007.

In a November 8, 2007 decision, an Office hearing representative affirmed the July 10, 2007 decision, as modified. The hearing representative noted that appellant provided sufficient evidence to support that she was diagnosed with bilateral carpal tunnel syndrome and cervical radiculopathy and identified employment the factors she believed contributed to her condition. However, the medical evidence was insufficient to establish that the diagnosed conditions were causally related to her work duties.

On October 27, 2008 appellant requested reconsideration. She submitted a copy of her CA-2 and a July 2, 2007 attending physician's report from Dr. Adams, both previously of record. Appellant also submitted a November 7, 2007 duty status report from Dr. J. Saperstein, a Board-certified orthopedic surgeon, who noted clinical findings of fibrosis of the hands and feet due to laceration of the fingers and reflex sympathetic dystrophy. In a November 7, 2007 attending physician's report, Dr. Saperstein diagnosed laceration to the fingers and reflex sympathetic dystrophy caused by a dog bite on June 25, 2007. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment duty.

In a January 28, 2009 decision, the Office denied appellant's reconsideration request on the grounds that she failed to raise a substantive legal question or include new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of the Act,¹ the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,² which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant's October 27, 2008 request for reconsideration 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. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, appellant submitted a November 7, 2007 duty status report from Dr. Saperstein who noted clinical findings of fibrosis of the hands and feet due to laceration of the fingers and reflex sympathetic dystrophy. A November 7, 2007 attending physician's report from Dr. Saperstein diagnosed laceration to the fingers and reflex sympathetic dystrophy caused by a dog bite on June 25, 2007. Dr. Saperstein indicated that this was employment related. However, these reports are not relevant to appellant's claim of occupational disease attributed to lifting tubs of mail and casing letters. The issue on which her claim was denied is whether appellant's diagnosed conditions of bilateral carpal tunnel syndrome and cervical radiculopathy were causally related to her work duties as a letter carrier as noted in

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b).

³ *Id.* at § 10.608(b).

her statements to the Office. To the extent that Dr. Saperstein addressed causal relationship, he indicated that appellant's condition was due to a dog bite. The Board notes that appellant's occupational disease claim did not implicate a dog bite as a cause of her claimed condition.

Appellant resubmitted a copy of her CA-2 and a July 2, 2007 attending physician's report from Dr. Adams. However, this evidence is duplicative of that already contained in the record.⁴ It was previously considered by the Office in its November 8, 2007 decision and found to be deficient. The Office properly determined that this evidence did not constitute a basis for reopening the case for further merit review.

Appellant did not otherwise provide any new and relevant evidence pertaining to the issue of whether her diagnosed conditions of bilateral carpal tunnel syndrome and cervical radiculopathy were causally related to her work duties. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

On appeal, appellant asserted that the Office did not consider all of the evidence she submitted and that her supervisor encouraged her to file a claim. She also submitted new evidence on appeal. Appellant stated that she was confused by the January 28, 2009 decision in light of a January 23, 2009 letter to the employing establishment in which the Office indicated that it would conduct a merit review of the claim. The Board notes that the record indicates that the Office considered all of the evidence properly before it. At the time of the January 28, 2009 decision, the August 23, 2008 report of Dr. Ruiz was not of record. Therefore, the Board may not consider this report on appeal.⁵ The fact that appellant's supervisor encouraged her to file a claim is not a basis for obtaining a merit review. The underlying issue in this case concerns the medical evidence addressing the causal relationship between a diagnosed medical condition and appellant's work duties. The Office's January 23, 2009 letter to the employing establishment did not obligate the Office to issue a merit decision. The standard for obtaining a merit review has been codified in the applicable federal regulations. The regulations address the basis on which a claimant may obtain further merit review. To the extent the January 23, 2009 letter departs from this standard, the January 28, 2009 decision properly applied the regulations to the evidence submitted on reconsideration.

Appellant did not show that the Office erroneously applied or interpreted a point of law; advance a point of law or fact not previously considered by the Office; or submit relevant and pertinent evidence not previously considered by the Office."⁶ Consequently, she is not entitled to a review of the merits of her claim pursuant to the requirements under section 10.606(b)(2).

⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *See* 20 C.F.R. § 501.2(c)(1) (the Board's review of a case is limited to the evidence in the case record that was before the Office at the time of its final decision).

⁶ *Id.* at § 10.606(b).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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