United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 09-1676**
	)	**Issued: May 24, 2010**
U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, 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 22, 2009 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs' dated March 10, 2009 which denied her claims for a schedule award and a recurrence of disability as of December 10, 2008. She also timely appealed an April 27, 2009 decision denying her request for reconsideration.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUES

The issues are: (1) whether appellant sustained permanent impairment to her right arm warranting a schedule award; (2) whether the Office properly denied her claim for a recurrence of disability on December 10, 2008; and (3) whether the Office properly denied her request for a review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] The record contains a November 3, 2008 overpayment decision. However, appellant did not appeal from this decision.

FACTUAL HISTORY

On January 30, 2008 appellant then a 46-year-old letter carrier, filed a claim for a recurrence of disability related to an October 18, 2007 injury.[2] On January 19, 2008 she experienced pain in her right hand while sorting mail on her first day back at work. Appellant stopped work on January 19, 2008. The Office determined that her claim should be adjudicated as a new traumatic injury.

In a January 22, 2008 report, Dr. Ilene Grossman, a Board-certified internist, advised that appellant had de Quervain's tenosynovitis as a direct result of her job as a letter carrier. She advised that appellant required a job that did not involve the repetitive use of her hands. On April 3, 2008 Dr. Grossman repeated the diagnosis and advised that appellant was totally disabled.

On April 17, 2008 the Office accepted the claim for radial styloid tenosynovitis of the right wrist. Appellant was placed on the periodic rolls and received appropriate compensation benefits.

Appellant was referred by Dr. Grossman to Dr. Jim W. Roderique, a Board-certified hand surgeon. On July 30, 2008 Dr. Roderique advised that appellant could return to full and normal work status with no restrictions as of July 31, 2008. In an August 14, 2008 report, he noted findings from the July 30, 2008 examination and advised that appellant had no swelling, discoloration or atrophy. Appellant had full range of motion of all joints without pain, no tenderness over the wrist joint, the carpometacarpal (CMC) joint of her thumb or the first dorsal compartment. No crepitus was demonstrated on passive or active range of motion and all provocative signs for carnal tunnel syndrome were negative. Wrist flexion and extension against resistance caused no pain at the elbow or the wrist. Dr. Roderique found that Finkelstein's and hitchhike maneuvers were both negative. He stated that he "could find nothing to explain the patient's symptoms in the past and therefore I must assume that these have resolved. I recommend that she resume full use of her hand."

The record indicates that appellant returned to regular full-duty work on July 31, 2008.

On January 9, 2009 appellant requested a schedule award. She also submitted a Form CA-7 for leave without pay from December 10, 2008 to January 9, 2009. In a December 10, 2008 report, Dr. Grossman opined that appellant currently had tenosynovitis and lateral/medial epicondylitis which were the result of repetitive motions of her right arm in her current job duties. She indicated that appellant would no longer be able to perform her current job duties, as this was a "recurrence."

By letters dated January 28 and 30, 2009, the Office informed appellant of the evidence needed to support her claims for a schedule award and a recurrence of disability. It requested that she submit evidence within 30 days. The Office advised appellant that her claim for

[2] The record reflects that appellant had a prior claim for an injury to her right hand and wrist on October 18, 2007. File No. xxxxxx504. The prior claim is not before the Board on the present appeal.

compensation from December 10, 2008 to January 9, 2009 would be adjudicated as a recurrence claim due to her employment-related condition.

In a February 4, 2009 permanent impairment rating, Dr. Roderique opined that appellant reached maximum medical improvement on July 30, 2009. He advised that she did not have any permanent impairment of her right arm. In a February 12, 2009 report, Dr. Roderique reiterated that when he examined appellant on July 30, 2008, he found no abnormalities in the right hand. He stated that any tenosynovitis had resolved.

In a March 10, 2009 decision, the Office denied appellant's claim for a schedule award, finding that Dr. Roderique did not support that she sustained any permanent impairment of her right hand.

In a separate decision dated March 10, 2009, the Office denied appellant's claim for a recurrence of disability as of December 10, 2008. It noted that Dr. Roderique found that her condition had resolved by July 30, 2009.

Appellant requested reconsideration on April 16, 2009. She resubmitted copies of Dr. Roderique's reports.

By decision dated April 27, 2009, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] Before a schedule award may be granted, the employee must establish permanent impairment of a member or function of the body.[6]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides* (5th ed. 2001).

[6] *See Vanessa Young*, 55 ECAB 575 (2004); *Renee M. Straubinger*, 51 ECAB 667 (2000).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for radial styloid tenosynovitis of the right wrist. Appellant claimed a schedule award on January 9, 2009. The evidence of record, however, is insufficient to establish that she sustained any permanent impairment to her right hand or arm due to the accepted condition.

On August 14, 2008 Dr. Roderique advised that appellant had no impairment to her right hand. There was no swelling, discoloration or atrophy. Dr. Roderique found a full range of motion to all joints of the hand and wrist without pain or tenderness. He advised that all provocative signs for carpal tunnel syndrome were negative and wrist flexion and extension against resistance caused no pain at the elbow or the wrist. Dr. Roderique noted that he could find nothing to explain appellant's symptoms in the past and found that her condition had resolved. He recommended that she resume work with the full use of her hand. On February 4, 2009 Dr. Roderique reiterated that appellant had reached maximum medical improvement on July 30, 2009 without any permanent impairment. On February 12, 2009 Dr. Roderique explained that appellant's condition had resolved and that he found no abnormalities in her right hand. The record also contains reports from Dr. Grossman but she did not address whether appellant had any permanent impairment related to the accepted conditions. The Board finds that these reports do not establish that appellant sustained any impairment of her right hand or arm.

Appellant did not submit any other medical evidence to establish permanent impairment. Accordingly, the Board finds that she is not entitled to a schedule award.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7]

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[8]

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he or she claims compensation is causally related to the accepted employment injury.[9] Appellant has the

[7] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB ___ (Docket No. 07-2287, issued May 16, 2008).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[9] *Kenneth R. Love, id*.

burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.[10] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[11] Moreover, the physician's conclusion must be supported by sound medical reasoning.[12]

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained radial styloid tenosynovitis on the right. Appellant filed a claim for wage-loss compensation from December 10 to January 9, 2009. The Office requested that she provide medical evidence that addressed the causal relationship between her accepted conditions and her disability for work. Appellant did not submit any reasoned medical evidence that her disability for the claimed period was causally related to her January 19, 2008 employment injury. There is no report of record from a treating physician addressing why her claimed disability beginning December 10, 2008 was due to the accepted right tenosynovitis.

Dr. Roderique's July 30, 2008 report advised that appellant could return to full and normal work status with no restrictions on July 31, 2008. On August 14, 2008 he reiterated that he could find nothing to explain appellant's symptoms and that her condition had resolved. Dr. Rodrique reiterated in a February 12, 2009 report that appellant had no right hand abnormalities and that her tenosynovitis had resolved. This evidence does not support appellant's claim of disability related to her accepted condition.

In a December 10, 2008 report, Dr. Grossman indicated that appellant had tenosynovitis lateral/medial epicondylitis that were the result of repetitive motions of her right arm in her current job duties. She stated only that appellant would no longer be able to perform her current job duties, as this was a "recurrence." Dr. Grossman did not provide an adequate medical explanation to support her conclusion that appellant had sustained a recurrence of her accepted condition.[13] The need for medical rationale is important as Dr. Roderique, a hand specialist, found normal findings on examination and had opined that the accepted tenosynovitis had resolved.

Accordingly, the Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on December 10, 2008 due to her January 19, 2008 employment injury.

[10] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

[11] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008).

[12] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

LEGAL PRECEDENT -- ISSUE 3

Under section 8128(a) of the Federal Employees' Compensation Act,[14] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the Office; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[15]

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.[16]

ANALYSIS -- ISSUE 3

Appellant's April 16, 2009 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.

Appellant resubmitted copies of Dr. Roderique's reports of July 20, 2008 and February 4 and 12, 2009. This evidence was previously of record and considered by the Office. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.[17]

The Office's March 10, 2009 decisions denied appellant's claim for schedule award because there was no medical evidence establish permanent impairment or to establish a recurrence of disability. The underlying issue is medical in nature. As noted, appellant did not submit any new or relevant medical evidence with her reconsideration request. Therefore, it was properly denied by the Office.

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[14] 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b).

[16] *Id.* at § 10.608(b).

[17] *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

The evidence submitted by appellant on reconsideration does not satisfy any criterion, for reopening a claim for merit review. Appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted.

On appeal, appellant contends that the evidence she submitted was not duplicative. However, the only evidence submitted on reconsideration was previously of record and insufficient to warrant further merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained permanent impairment. The Board finds that the Office properly denied her recurrence of disability claim. The Board also finds that the Office properly denied appellant's request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 27 and March 10, 2009 are affirmed.

Issued: May 24, 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