United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 09-2066**
	)	**Issued: May 12, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Effingham, IL, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant filed a timely appeal from the May 27, 2009 merit decision of the Office of Workers' Compensation Programs denying her occupational injury claim and June 25, 2009 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 28, 2009 appellant, a 43-year-old retired rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS), bilateral epicondylitis, degenerative arthritis of the trapezial metacarpal joints of the bilateral

thumbs and a bone spur in her right shoulder as a result of employment activities.[1] In a March 31, 2009 statement, she noted that her condition developed gradually as a result of her repetitive activities as a rural carrier. Appellant retired on disability effective February 7, 2007.

In a letter dated April 22, 2009, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of her diagnosed conditions.

Appellant submitted a November 7, 2008 report from Dr. Walter I. Choung, a Board-certified orthopedic surgeon. Examination of the right shoulder revealed subacromial tenderness. Active abduction was 175 degrees. There was positive impingement sign and abduction strength was 4+/5. There was minimal tenderness to palpation of the right elbow, with full range of motion and a weakly positive Tinel's sign at the cubital tunnel. There was mild tenderness to palpation at the lateral epicondyle of the left elbow, with a weakly positive Tinel's sign at the cubital tunnel. There was positive Tinel's sign on the left wrist and positive Phalen's on the left. There was mild tenderness upon palpation at the carpal metacarpal (CMC) joints bilaterally. Dr. Choung diagnosed right shoulder impingement; history of right lateral epicondylectomy; left cubital tunnel syndrome, left CTS and history of bilateral CMC joint arthropathy. He noted that appellant wanted to continue working on a light-duty basis. On December 5, 2008 Dr. Choung reiterated his diagnoses and recommended that she continue working light duty. His examination findings were essentially unchanged from his November 7, 2008 report.

By decision dated May 27, 2009, the Office denied appellant's claim on the grounds that she had not established causal relationship between the diagnosed conditions and accepted work factors.

In a statement dated May 15, 2009, appellant reiterated that her duties as a rural carrier caused or contributed to her diagnosed conditions. She stated that her position required her to lift a minimum of 70 pounds; that she lifted between 10 and 30 pounds, eight hours per day; and that she delivered between 3,750 and 4,500 pieces of mail to between 750 and 800 per day. Appellant also performed repetitive functions that taxed her elbows, shoulders and wrists, including casing, sorting and delivering mail.

On June 10, 2009 appellant requested reconsideration of the Office's May 27, 2009 decision. In support of her request, she submitted notes from Dr. Brittani L. Riggio, a chiropractor, dated January 19 through March 19, 2007. Dr. Riggio provided examination findings and diagnosed subdeltoid bursitis, bilateral CTS and cervical and thoracic spine segmented dysfunction. Appellant also submitted an October 7, 2008 report from Dr. Choung. Examination findings and diagnoses were identical to those contained in Dr. Choung's prior reports. Appellant also resubmitted a copy of Dr. Choung's December 5, 2008 report.

[1] Appellant's April 30, 2002 occupational disease claim was accepted for bilateral epicondylitis and bilateral CTS. (File No. xxxxxx621).

By decision dated June 25, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her 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 is causally related to the employment injury.[4]

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.[5] 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 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.[6]

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.[7]

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

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

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

ANALYSIS -- ISSUE 1

The Office accepted that appellant's work as a rural carrier involved repetitive work activities. The medical evidence submitted by appellant, however, is insufficient to establish that her diagnosed medical conditions were caused or aggravated by the established employment activities. Therefore, appellant has failed to meet her burden of proof.

In a November 7 and December 5, 2008 reports, Dr. Choung provided examination findings and diagnosed right shoulder impingement; history of right lateral epicondylectomy; left CTS and history of bilateral CMC joint arthropathy. He did not, however, express any opinion as to the cause of appellant's conditions. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Dr. Choung did not describe appellant's job duties or explain the medical process through which such duties would be competent to cause or contribute to the claimed medical conditions. For these reasons, his reports are of diminished probative value and are insufficient to establish her claim.

Appellant expressed her belief that her conditions resulted from her duties as a rural carrier. The Board has held that the mere 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.[9] Neither the fact that, the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report, which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

On appeal, appellant argues that the medical evidence submitted is sufficient to establish a causal relationship between her work activities and her diagnosed conditions. For reasons stated, the Board finds her contention to be without merit.

[8] *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[11] it 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.[12] 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.[13] 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.[14]

The Board 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]

ANALYSIS -- ISSUE 2

Appellant's June 10, 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 merely reiterated arguments previously set forth. Consequently, she 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).

The Board finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office.[16] Notes from her chiropractor, Dr. Riggio, do not address the issue on which the Office based its denial of her claim, namely whether there was a causal relationship between her diagnosed conditions and the established work events. Therefore, the report is irrelevant. Moreover, Dr. Riggio cannot be considered a physician under the Act, as it has not been established that there is a subluxation as demonstrated by x-ray.[17] Therefore, her

[11] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

[12] 20 C.F.R. § 10.606(b)(2).

[13] *Id.* at § 10.607(a).

[14] *Id.* at § 10.608(b).

[15] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[16] 20 C.F.R. § 10.606(b)(2).

[17] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician under § 8101(2) of the Act, which provides: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988)

report is not relevant to the basis on which her claim was denied. Dr. Choung's October 7, 2008 report is also devoid of an opinion on causal relation and is, therefore, irrelevant. The copy of his December 5, 2008 report is, duplicative.[18] The Board finds that none of the evidence submitted by appellant in support of her reconsideration request constitutes relevant and pertinent new evidence not previously considered by the Office.[19] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.[20]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[18] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

[19] *See Susan A. Filkins*, 57 ECAB 630 (2006).

[20] The Board notes that appellant submitted additional evidence after the Office rendered its June 25, 2009 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the June 25 and May 27, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 12, 2010
Washington, DC

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

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

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