

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Little Rock, AR, Employer**

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**Docket No. 10-205  
Issued: October 5, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 26, 2009 appellant filed a timely appeal of a May 8, 2009 decision of the Office of Workers' Compensation Programs denying his claim for compensation and an August 19, 2009 decision denying his request for reconsideration without a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration without a merit review.

**FACTUAL HISTORY**

On July 30, 2007 appellant, then a 54-year-old mail handler, filed an occupational disease claim alleging that he injured his left wrist due to repetitive heavy lifting in the performance of duty. He first became aware of his condition on April 19, 2000 and that his employment

activities caused or aggravated his condition in October 2000. Appellant stopped work on July 13, 2007 and returned intermittently. On April 17, 2008 he stopped work and did not return as light duty was not available. The employing establishment controverted the claim.

On August 30, 2007 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

In a July 23, 2007 statement, appellant noted that lifting and carrying bags weighing between 80 and 90 pounds for six years caused strain on his wrist and required him to have surgery to relieve the pain. A May 8, 2000 left wrist x-ray report from Dr. Michael Angela Rivero, a Board-certified diagnostic radiologist, revealed nonunited scaphoid fracture with probable proximal segment necrosis. An April 19, 2000 left wrist x-ray report from Dr. Rajesh Sethi, a Board-certified diagnostic radiologist, found nonunited diagnosis of left scaphoid, changes of avascular necrosis present in the proximal fracture fragment and a Herbert screw present in the distal fragment. He noted osteoarthritic changes in the radiocarpal joint and findings consistent with decreased joint space and marginal osteophytes. Dr. Sethi advised that disc deformity was present.

On May 12, 2005 Dr. Samuel Berry Thompson, a Board-certified orthopedic surgeon, noted appellant's complaint of left wrist pain that appellant related to a 1975 military injury where he sustained a wrist fracture and underwent a bone graft and screw fixation. Upon examination, he found that appellant's wrist was tender over the radial side with prominence over the area of the scaphoid and scapholunate area dorsally which is very tender. X-rays performed during examination revealed the left wrist showed scaphoid nonunion, a very short screw in the distal pole of the scaphoid that did not appear to cross the fracture site, chronic scaphoid nonunion and ulnar translocation of the wrist with lunate 50 percent uncovered by the radius, radial styloid scaphoid arthritic changes and changes in the rest of the wrist joint that represented scaphoid nonunion and advanced collapse pattern. Dr. Thompson recommended surgery. He noted that appellant appeared to also have carpal tunnel syndrome symptoms. Dr. Thompson opined that all of these problems related to the original scaphoid fracture and that appellant currently had sufficient arthritis in his wrist for disability rating purposes.

In a May 25, 2007 left wrist x-ray report, Dr. John Livoni, a Board-certified diagnostic radiologist, found postsurgical, post-traumatic and degenerative changes. He indicated that the overall appearance of the wrist was unchanged from an October 26, 2004 x-ray. In a June 6, 2007 report, Dr. Karmen Hopkins, Board-certified in family medicine, noted appellant's complaint of left wrist and elbow pain for several years that had become worse. He noted a history of low back pain, a back injury in 1994 and left wrist degenerative joint disease only in the winter that was repaired with a bone graft in 1975. An unsigned June 4, 2007 treatment note indicated that appellant's current problems included lumbar spine sprain, chronic wrist pain, chronic back pain, alopecia areata and depression. It further noted that the chronic left wrist pain had become worse and interfered with appellant's ability to work. Left wrist pain was diagnosed. Appellant also submitted a July 17, 2007 hospital discharge summary signed by a nurse.

On July 17, 2007 Dr. Thompson noted that appellant had been under his care for wrist fusion and would be off work for three months.

In an undated statement, appellant attributed his left wrist condition to lifting overweight sacks since 2000 for 40 to 60 hours per week. He first noticed his condition in 2000 after visiting a physician. Appellant indicated that prescribed treatment had not been effective so he underwent left wrist fusion on July 16, 2007. He noted that he underwent prior orthopedic surgery in 1975.

In an October 22, 2007 decision, the Office denied appellant's claim finding that the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events.

On November 6, 2007 appellant requested an oral hearing. On August 30, 2008 he requested reconsideration.<sup>1</sup> Appellant indicated his request was based on new evidence and a legal document not made previously in his request for a schedule award.<sup>2</sup> He noted that the employing establishment hired him on November 7, 1998 knowing that he had a surgically repaired wrist fracture. Appellant indicated that, after years of working at the employing establishment, his wrist condition developed further problems. He noted filing numerous safety complaints about his workstation that went unresponsive. Appellant explained that he needed additional surgery to eliminate his pain for which he underwent a complete infusion process. He noted that his treating physician opined that the cause of his condition was more likely than not attributed to lifting heavy mailbags and was the direct cause for surgery. Appellant noted that the employing establishment denied his request for light duty after the Office denied his claim.

In a July 14, 2008 x-ray report of the left wrist, Dr. Richard Fitzrandolph, a Board-certified diagnostic radiologist, identified minor abnormality and found no definitive solid bony union and evidence of motion around the scaphoid lag screw.

On July 14, 2008 Dr. Pramod Nelluri, a hand surgeon, stated that, according to appellant, he had a left scaphoid fracture for which he underwent a left scaphoid fixation 30 years prior while in the military. He noted appellant's report of lifting heavy mailbags at work whereby he developed wrist pain and arthritis and underwent left wrist fusion in July 2007. Dr. Nelluri first evaluated appellant on April 17, 2008, nine months after his wrist fusion. He opined that, based on the information that appellant presented, his scaphoid fracture was more likely than not the direct cause of his later need for wrist fusion surgery. Dr. Nelluri further opined that work-related activities including lifting heavy mailbags more likely than not contributed to wrist pain and deterioration that served the basis for the need for wrist fusion surgery.

In a May 8, 2009 decision, an Office hearing representative affirmed the October 22, 2007 decision finding insufficient medical evidence to establish causal relationship.

On July 30, 2009 appellant requested reconsideration. He asserted that the Office erroneously indicated that he had 40 percent service-connected disability for his wrist injury as

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<sup>1</sup> In a September 22, 2008 letter, the Office notified appellant that it had located his oral hearing request that had been submitted to the wrong address. In another letter of the same date, it informed appellant that it would proceed with his timely hearing request. A telephonic hearing was held on February 10, 2009.

<sup>2</sup> The Office notified appellant that he could not pursue a schedule award claim for an unaccepted condition.

the Department of Veterans Affairs had given him 70 percent disability. Appellant also indicated that Dr. Nelluri's knowledge of his condition preceded Dr. Thompson's knowledge. He noted that he was submitting a letter from the Postal Workers' Union providing an overview of conditions that appellant sustained while awaiting the Office's decision regarding his claim.

Appellant submitted a July 22, 2009 statement from a union official who noted that appellant filed a grievance with the employing establishment on November 9, 2007 for the employing establishment's failure to provide him with light duty.

In an August 19, 2009 decision, the Office denied appellant's request for reconsideration finding the evidence and argument submitted was insufficient to warrant a merit review.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

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 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.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>5</sup>

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<sup>3</sup> *J.E.*, 59 ECAB \_\_\_ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>5</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS -- ISSUE 1

The record supports that appellant's job as a mail handler required that he frequently lift bags of mail. However, the medical evidence is insufficient to establish that lifting bags of mail caused or aggravated his claimed left wrist condition.

In a July 14, 2008 report, Dr. Nelluri indicated that appellant reported undergoing left scaphoid fixation for a fracture sustained 30 years prior while in the military. Appellant also reported developing wrist pain and arthritis from lifting heavy mailbags at work. Dr. Nelluri, who first evaluated appellant on April 17, 2008, opined that, based on the information provided by appellant, his work activities more likely than not contributed to his wrist pain and deterioration requiring wrist fusion surgery. Although this general opinion supports causal relationship, a physician's opinion must be independent from appellant's belief regarding causal relationship.<sup>6</sup> Dr. Nelluri did not provide a reasoned opinion explaining the reasons why appellant's work duties would have caused or aggravated his diagnosed condition. He did not note which examination findings supported his opinion on causal relationship. The need for reasoning or rationale is especially important where appellant has more than a 30-year history of a significant left wrist condition. Dr. Nelluri's opinion is of diminished probative value and insufficient to establish appellant's claim.

Dr. Thompson's May 12, 2005 report noted that appellant related his current left wrist pain to a 1975 wrist fracture military injury. He diagnosed chronic scaphoid nonunion, scaphoid arthritis, ulnar translocation and carpal tunnel syndrome. Dr. Thompson opined that appellant's problems related to his original scaphoid fracture and that his current arthritis was sufficient for disability purposes. He does not support appellant's claim as he did not specifically address appellant's employment as a cause or aggravator of any diagnosed condition.<sup>7</sup> Dr. Thompson's July 17, 2007 report also did not address the cause of appellant's condition and disability. Similarly, Dr. Hopkins' report is of limited probative value as it did not address whether particular employment factors caused or aggravated a diagnosed condition.

The record also contains several x-ray reports of appellant's left wrist finding nonunited scaphoid fracture and degenerative joint disease. However, none of these reports address the issue of causal relationship or discuss whether appellant's employment activities caused or aggravated these diagnosed conditions. As noted, medical evidence without an opinion on causal relationship is of limited probative value.

Additionally, an unsigned June 4, 2007 report diagnosing left wrist pain is of no probative value as it does not demonstrate that it was from a physician as defined under the Act.<sup>8</sup>

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<sup>6</sup> See *Earl David Seal*, 49 ECAB 152, 155-56 (1997) (a medical opinion is of little probative value where it is based on appellant's beliefs concerning the cause of his injuries rather than the doctors independent reasoning).

<sup>7</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that 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>8</sup> See *D.D.*, 57 ECAB 734 (medical reports lacking proper identification do not constitute probative medical evidence).

Similarly, a July 17, 2007 nurse's report has no probative value as registered nurses and licensed practical nurses are not "physicians" as defined under the Act.<sup>9</sup>

For these reasons, the medical evidence is insufficient to establish that appellant's employment activities caused his left wrist condition.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a), 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>10</sup> Section 10.608(b) of Office regulations provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

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

Appellant's reconsideration request consists of a statement asserting that the Office erroneously noted that he received 40 percent disability for his left wrist injury through the Department of Veterans Affairs. He also asserted that Dr. Nelluri's knowledge of his condition preceded Dr. Thompson's knowledge. However, neither of these assertions satisfies the criteria necessary to reopen a case for merit review as they do not show that the Office erroneously applied a specific point of law and they do not advance any new legal arguments.

Although the July 22, 2009 statement from a union official constitutes new evidence, it does not constitute relevant evidence as it does not address the underlying issue, which is medical in nature, regarding whether appellant's employment duties caused his left wrist condition. The Board has held that evidence that does not address the pertinent issue in a claim does not warrant a reopening of the case for a merit review.<sup>12</sup> Appellant submitted no new medical evidence addressing the cause of his claimed condition. The Office properly denied a merit review of the claim as appellant did not meet one of the three regulatory criteria for reopening his claim for a merit review.

On appeal, appellant asserts that a physician provided medical evidence of causal relationship based on a specific and accurate history of his employment condition and that the

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<sup>9</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005); see 5 U.S.C. § 8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>10</sup> *D.K.*, 59 ECAB \_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>11</sup> *K.H.*, 59 ECAB \_\_\_ (Docket No. 07-2265, issued April 28, 2008).

<sup>12</sup> See *E.M.*, 60 ECAB \_\_\_ (Docket No. 09-39, issued March 3, 2009) (where the Board held that new evidence submitted upon a reconsideration request that does not address the pertinent issue is not relevant evidence).

physician indicated that being a mail handler exacerbated appellant's wrist pain resulting in wrist fusion surgery. As noted, the medical evidence of record is insufficient to meet appellant's burden of proof as appellant did not submit a physician's reasoned opinion explaining the reasons why appellant's claimed left wrist condition was caused or aggravated by his employment. Appellant also asserts that the record shows that the Department of Veterans Affairs has increased his disability rating since working for the employing establishment. However, the findings of other government agencies are not determinative of regard to questions arising under the Act as other statutes have differing standards for determining eligibility for benefits.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty. The Board also finds that the Office properly denied appellant's request for reconsideration without a merit review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated August 19 and May 8, 2009 are affirmed.

Issued: October 5, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>13</sup> See *Andrew Fullman*, 57 ECAB 574 (2006); *Daniel Deparini*, 44 ECAB 657 (1993).