

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

W.M., Appellant

and

**GENERAL SERVICES ADMINISTRATION,
FEDERAL ACQUISITION SERVICE,
Kansas City, MO, Employer**

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**Docket No. 11-887
Issued: December 12, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 22, 2011 appellant filed a timely appeal from a September 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational exposure claim and a November 26, 2010 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 her burden of proof to establish that she developed bilateral carpal tunnel syndrome (CTS) as a result of factors of her employment; and (2) whether OWCP properly denied her request for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 23, 2010 appellant, then a 58-year-old technical specialist, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral CTS from constantly using a keyboard and mouse during work. She first became aware of her illness in 2005 and of its relationship to her employment on April 1, 2006. Appellant first received medical care on August 19, 2009 and notified her supervisor on September 9, 2009.

In an undated narrative statement, appellant reported that she unofficially began working as a technical specialist in 1996 and officially started her duty on August 24, 2003. She stated that CTS began to develop in her right wrist in 2001 and became worse over time from using a keyboard and mouse. In support of her claim, appellant submitted a technical services specialist job description and an application for federal employment (SF-171).

In an August 19, 2009 report, appellant had a needle electromyography (EMG) and nerve conduction study (NCS) with Dr. Wilson Garcia, Board-certified in physical medicine and rehabilitation, who reported that she complained of pain, numbness, tingling, weakness and swelling in her right and left wrists and hands. On examination, Dr. Garcia noted bilateral swelling of the wrists and hands. He diagnosed mild bilateral CTS, more marked on the right side.

By letter dated August 19, 2010, OWCP advised appellant of the deficiencies in her claim and requested additional factual and medical evidence.

By letter dated September 9, 2010, appellant stated that she mistakenly reported that her CTS began in 2001. She stated that her CTS actually began in her right hand in 2008 and in her left hand in 2009 from constantly using her keyboard and mouse.

By decision dated September 20, 2010, OWCP denied appellant's claim finding that the evidence did not show that her bilateral CTS was related to the established work-related events.

By letter dated November 16, 2010, appellant requested reconsideration of OWCP's decision. She stated that she had enclosed a letter from Dr. Luis Toledo, which opined that her CTS was causally related to the repetitive work she had been performing. According to OWCP, no such letter or other evidence was received.

By decision dated November 26, 2010, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence. It specifically noted that no letter from Dr. Toledo had been received.²

² The Board notes that appellant submitted additional evidence after OWCP rendered its November 26, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting that causal relationship.⁶ 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant engaged in repetitive hand movements while using her computer as a technical specialist. It denied her claim because the evidence failed to establish a causal relationship between those activities and her bilateral CTS. After careful review, the

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999).

⁵ Elaine Pendleton, *supra* note 3 at 1143 (1989).

⁶ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁷ James Mack, 43 ECAB 321 (1991).

Board finds that the medical evidence of record is insufficient to establish that appellant sustained bilateral CTS causally related to factors of her employment.⁸

The only medical evidence received was an August 19, 2009 EMG and NCS from Dr. Garcia, who reported that appellant complained of pain, numbness, tingling, weakness and swelling in her right and left wrists and hands. On examination, Dr. Garcia noted bilateral swelling in the wrists and hands and diagnosed bilateral mild CTS. While he diagnosed appellant's bilateral CTS, he failed to explain how her work duties caused or aggravated her medical condition. The Board has held that 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.⁹ Without medical reasoning explaining how appellant's employment factors caused her bilateral CTS, Dr. Garcia's report is insufficient to meet appellant's burden of proof.¹⁰

The underlying issue in this case was whether appellant's injury was causally related to factors of her employment as a technical specialist. That is a medical issue which must be addressed by relevant medical evidence.¹¹ Appellant's honest belief that work caused her medical problem is not in question, but that belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the accepted factors of employment and appellant's bilateral CTS. Thus, appellant has failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To reopen a case for merit review under section 8128(a), the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant new evidence not previously considered by OWCP.¹² Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹³

⁸ See *Robert Broome*, 55 ECAB 339 (2004).

⁹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹¹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹² *D.K.*, 59 ECAB 141 (2007).

¹³ *K.H.*, 59 ECAB 495 (2008).

ANALYSIS -- ISSUE 2

The Board finds that, the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.¹⁴

On appeal, appellant argues that she sent her November 16, 2010 reconsideration request accompanied with a letter from Dr. Toledo. As her reconsideration request was received, the issue is not whether her reconsideration request was delivered, but rather whether the request was accompanied by additional evidence. Appellant has not otherwise provided argument or evidence of sufficient probative value to show that Dr. Toledo's medical report was ever received by OWCP. The record before the Board contains no such report.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her November 16, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant also failed to submit any medical evidence addressing causal relationship. There is no indication that a medical report concerning causal connection was received by OWCP. The decisive issue in this case was whether appellant's bilateral CTS was causally related to factors of her employment. That is a medical issue which must be addressed by relevant medical evidence.¹⁵ In this case, appellant did not submit any new and relevant medical evidence.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹⁶ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review in the November 26, 2010 decision.¹⁷

¹⁴ *Glen E. Shiner*, 53 ECAB 165 (2001). Abuse of discretion is generally shown through proof of manifest error clearly unreasonable exercise of judgment or actions taken that are contrary to both logic and probable deduction from established facts.

¹⁵ *Supra* note 10.

¹⁶ 20 C.F.R. § 501.2(c)(1).

¹⁷ *Sherry A. Hunt*, 49 ECAB 467 (1998).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral CTS is causally related to factors of her employment as a technical specialist. OWCP properly denied her request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated November 26 and September 20, 2010 are affirmed.

Issued: December 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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