United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 10-1715**
	)	**Issued: May 3, 2011**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 15, 2010 appellant filed a timely appeal from a January 7, 2010 decision of the Office of Workers' Compensation Programs denying his claim and also January 26 and May 21, 2010 decisions of the Office denying further review. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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; (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without a merit review; and (3) whether the Office properly denied appellant's request for an oral hearing under 5 U.S.C. § 8124(b).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 10, 2009 appellant, then a 64-year-old training and administrative specialist, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome. He became aware of his condition on May 20, 2009 and realized its connection to his employment on August 19, 2009. Appellant did not stop work.

In a November 19, 2009 letter, the Office informed appellant that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement detailing the work factors that contributed to his condition and medical reports describing symptoms, results of examinations and tests, diagnosis and treatment provided and offering a physician's reasoned opinion as to how work factors caused the injury.

A July 16, 2009 electrodiagnostic testing report from Dr. Carl T. Shenkman, a Board-certified neurologist, revealed delayed responses of the bilateral median nerves as well as delayed F waves at the left median and right ulnar nerves. He found the results to be consistent with mild median nerve entrapment indicative of carpal tunnel syndrome and mild left C6 and right C7 radiculopathy.

The employing establishment controverted the claim on November 17, 2009 and no evidence was provided to demonstrate that he sustained an injury while performing his job duties.

In an undated statement, appellant specified that he primarily performed tasks on the computer, including repetitive typing and data input. He worked four 10-hour shifts per week and was on the computer between 5 and 7 hours each day. Appellant first noticed a tingling sensation in this thumbs and index fingers while entering figures into a training database during the week of May 18, 2009, which extended to his middle and ring fingers in the subsequent weeks. He denied any preexisting injury. In a December 3, 2009 statement, appellant stated that he was employed in a similar capacity by other federal agencies since September 1991 and customarily typed between four-and-a-half and six hours per workday before he was transferred to the employing establishment. He added that he experienced symptoms two years earlier after completing a data entry assignment.

By decision dated January 7, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to establish a causal relationship between his claimed condition and federal employment.

Appellant requested reconsideration on January 14, 2010 and submitted copies of his December 3, 2009 statement and Dr. Shenkman's July 16, 2009 report. In a January 26, 2010 decision, the Office denied appellant's reconsideration request finding that information provided was insufficient to warrant a merit review of the claim.

On April 20, 2010 appellant requested an oral hearing. He stated that, after receiving his January 26, 2010 decision, he requested an oral hearing on February 3, 2010 and questioned why a hearing had not been scheduled. Attached was a copy of an oral hearing request form from appellant dated February 3, 2010 and which was received by the Office's Branch of Hearings and Review on April 26, 2010.

By decision dated May 21, 2010, the Office denied appellant's request on the grounds that he previously requested reconsideration and was not, as a matter of right, entitled to an oral hearing on the same issue. It further considered whether to grant a discretionary hearing and determined that the issue could equally be addressed by requesting reconsideration before the Office and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[5] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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.[7]

ANALYSIS -- ISSUE 1

The evidence supports that appellant routinely performed computer-oriented activity such as typing and data entry. The medical evidence also supports that he has mild median nerve

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See S.P.*, 59 ECAB 184, 188 (2007).

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *R.R.*, Docket No. 08-2010 (issued April 3, 2009).

[7] *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 4 at 352.

entrapment and left C6 and right C7 radiculopathy. Nevertheless, appellant has not met his burden of proof to establish his claim as the medical evidence does not establish that his diagnosed conditions are causally related to the accepted employment activity.

The sole medical evidence of record is Dr. Shenkman's July 16, 2009 electrodiagnostic testing report. Although Dr. Shenkman diagnosed carpal tunnel syndrome and cervical radiculopathy, he did not offer any explanation as to how appellant's repetitive typing and data entry caused his condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8] As noted, part of appellant's burden of proof includes the submission of medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant. As Dr. Shenkman's July 16, 2009 report did explain how work factors caused or aggravated appellant's diagnosed conditions, appellant failed to establish his claim.

Appellant argues on appeal that he was a federal employee since 1991. His exposure to employment factors alleged to have caused his condition is not in dispute. The reason appellant has not met his burden of proof is because he has not submitted reasoned medical evidence establishing that specific employment factors caused or aggravated a diagnosed medical condition. The fact that his condition may have arisen during a period of employment is not sufficient to show causal relationship.[9]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that the evidence or argument submitted by a claimant must either: (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.[11] Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

The Office initially denied appellant's claim on the basis that the medical evidence did not establish causal relationship. Appellant requested reconsideration on January 14, 2010 and submitted his December 3, 2009 statement and Dr. Shenkman's July 16, 2009 report. The record reflects that these documents were already received by the Office well before issuance of its

[8] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009). Furthermore, Dr. Shenkman failed to identify any work factors. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

[9] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008) (it is well established that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation).

[10] 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

[11] *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

[12] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

January 7, 2010 decision. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13] Thus, this evidence is insufficient to warrant a merit review of his claim. Appellant did not otherwise assert that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. Consequently, the Office properly found that he was not entitled to further review of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of the Act provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision and before review under section 8128(a), to a hearing on his claim before a representative of the Secretary.[14] Federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[15] Although the claimant is no longer entitled to an oral hearing or review of the written record as a matter of right if the request is filed past the 30-day period or he previously requested reconsideration pursuant to section 8128(a), the Office may within its discretionary powers grant or deny appellant's request and must exercise that discretion.[16]

ANALYSIS -- ISSUE 3

Appellant argues on appeal that he is entitled to an oral hearing. Before the Office, he asserted that his hearing request was filed within about a week of the Office's January 26, 2010 reconsideration decision.[17] However, no right to a hearing flows from a reconsideration decision. The Act, Office regulations and Office procedures clearly provide that there shall be no right to a hearing after there has been a request for reconsideration under 5 U.S.C. § 8128(a).[18] Hence, appellant was not entitled to a section 8124(b) hearing as a matter of right because he previously requested reconsideration.

The Office also has the discretionary power to grant a hearing when a claimant is not entitled to one as a matter of right. In its May 21, 2010 decision, the Office properly exercised its discretion and found that appellant's issue could also be addressed by requesting reconsideration before the Office and submitting additional evidence. The Board finds that there is no evidence that the Office abused its discretion in this regard. Accordingly, the Office properly denied appellant's request for an oral hearing.

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[13] *Edward W. Malaniak*, 51 ECAB 279 (2000).

[14] 5 U.S.C. § 8124(b)(1); *Peggy R. Lee*, 46 ECAB 527 (1995).

[15] 20 C.F.R. § 10.615.

[16] *See Eddie Franklin*, 51 ECAB 223 (1999); *Lee*, *supra* note 12.

[17] The record before the Board indicates that the request was not received by the Office until April 26, 2010.

[18] 5 U.S.C. § 8124(b)(1); *see* 20 C.F.R. § 10.616(a) (a claimant is not entitled to a hearing if he previously submitted a reconsideration request (whether or not it was granted) on the same decision); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Review Process*, Chapters 2.1600.4 (December 1991) (a hearing may not be held after a case has been reconsidered).

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty. Furthermore, the Board finds that the Office properly denied appellant's requests for reconsideration under 5 U.S.C. § 8128(a) and an oral hearing under 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the May 21, January 26 and 7, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 3, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board