

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONIKA TARWATER and U.S. POSTAL SERVICE,
POST OFFICE, Gilmer, TX

*Docket No. 03-1267; Submitted on the Record;
Issued July 11, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained osteoarthritis causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On August 8, 2002 appellant, then a 57-year-old rural carrier, filed an occupational disease claim alleging that she sustained osteoarthritis due to factors of her federal employment. Appellant stopped work on June 26, 2002.¹

By decision dated December 30, 2002, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained a medical condition causally related to her employment. Appellant requested reconsideration, which the Office denied in a merit decision dated January 29, 2003. In a letter dated February 6, 1993, appellant again requested reconsideration of her claim. By decision dated February 28, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of her claim.

The Board finds that appellant has not met her burden of proof to establish that she sustained osteoarthritis causally related to factors of her federal employment.

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

¹ Appellant's supervisor indicated on the claim form that appellant stopped work because of filing an occupational disease claim for hypertension.

diagnosed condition is causally related to the employment factors identified by the claimant.² The medical opinion 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.³

In this case, the Office accepted that appellant performed repetitive work with her hands in the course of her federal employment. The Office found, however, that appellant did not submit sufficient medical evidence to establish that she sustained osteoarthritis due to her repetitive work duties.

In support of her claim, appellant submitted a report dated November 18, 2002 from Dr. Jack D. Elder, Jr., a Board-certified orthopedic surgeon, who stated that he had treated appellant since July 19, 2000 for osteoarthritis of the hands and noted that she worked as a rural mail carrier. Dr. Elder related that on July 26, 2002 he treated her for increasing arthritic symptoms and recommended surgery. He stated:

“In summary [appellant] has significant degenerative type arthritis involving the entirety of her hands starting at the distal interphalangeal joints, then the proximal interphalangeal joints, and finally the trapeziometacarpal joints at the bases of the thumbs and will at some point have to have some surgical remedy for this if she intends to stay active and employable.”⁴

While Dr. Elder described appellant’s condition and the treatment that may be required, he did not address the cause of her condition. Therefore, his report is insufficient to meet her burden of proof.⁵

In a report dated January 9, 2003, Dr. Elder stated:

“I have reviewed our records and see that you have significant arthritis involving the distal interphalangeal joints of both hands. You also have proximal interphalangeal involvement and carpometacarpal destruction with grinding and pain at the base of the thumbs. It is my opinion that the repetitive work which you do as I understand that you are a mail carrier and do case mail is stirring up or aggravating your arthritis in your hands. It appears to me that any repetitive motion such as I believe that you do would be detrimental in a person who has as much arthritic involvement in both hands as you have.”

² *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *See Morris Scanlon*, 11 ECAB 384-85 (1960); *Williams E. Enright*, 31 ECAB 426, 430 (1980).

⁴ In a chart note dated July 26, 2002, Dr. Elder examined appellant for arthritis of her hands and recommended trapeziometacarpal arthroplasties as a beginning operation. Dr. Elder did not address the cause of appellant’s condition and thus his chart note is of diminished probative value.

⁵ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship).

Dr. Elder opined that appellant's repetitive work as a mail carrier was "stirring up or aggravating" her arthritis of the hands; however, he did not provide any explanation or medical rationale in support of his conclusion and, further, did not describe the specific employment duties which aggravated appellant's condition. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁶ Additionally, the Board has held that, where an employee claims an aggravation of an underlying condition due to an employment injury, the employee must provide a rationalized medical opinion discussing the nature of the underlying condition, including its natural or traditional course, how the underlying condition may have been affected by the employment, and the effects, if any, on the permanent condition.⁷

Appellant has not submitted a rationalized medical opinion sufficient to establish that the implicated factors of her federal employment caused or aggravated her osteoarthritis. Accordingly, appellant has not met her burden of proof and the Office properly denied her claim.

The Board finds that the Office properly denied appellant's request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁹

In her request for reconsideration, appellant argued that medical literature supported her claim that overuse of her joints caused or aggravated her osteoarthritis. Appellant also submitted a letter from the postmaster describing the repetitive nature of the duties of her position. However, the issue of whether appellant has established osteoarthritis due to the identified employment factors is medical in nature, and therefore, must be resolved by the submission of relevant medical evidence.¹⁰ As discussed above, evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *Newton Ky Chung*, 39 ECAB 919 (1988).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ Lay persons are not competent to render a medical opinion; see *James A. Long*, 40 ECAB 538 (1989).

¹¹ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

Appellant resubmitted the June 26 and November 18, 2002 and January 9, 2003 reports of Dr. Elder; however, material which is duplicative of that already contained in the case record does not constitute a basis for reopening a claim.¹²

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, or submitted new and relevant evidence with respect to her occupational disease claim. Accordingly, the Office properly refused to reopen the claim for merit review.

The decisions of the Office of Workers' Compensation Programs dated February 28 and January 29, 2003 and December 30, 2002 are affirmed.

Dated, Washington, DC
July 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).