

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMIE A. DETWILER and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL RECORDS DIVISION, Honolulu, HI

*Docket No. 03-1656; Submitted on the Record;  
Issued September 22, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay for the period December 11, 2002 to February 23, 2003; and (2) whether the Office properly denied appellant's request for a merit review.

On January 10, 2003 appellant, then a 42-year-old ratings specialist, filed a claim for traumatic injury (Form CA-1) alleging that she sustained tendinitis of the right wrist and forearm caused by repetitive motion on the computer and handling case files. The date of injury was noted as November 25, 2002, with notice to appellant's supervisor on December 6, 2002. Appellant received continuation of pay for 85.5 hours of intermittent work absences from December 11, 2002 to February 23, 2003, was off work from February 24 to 26, 2003, and used five hours of sick leave for medical visits on February 24 and 26 and March 6, 2003. On March 25, 2003 appellant elected to receive compensation benefits under the Federal Employees' Compensation Act and claimed leave buy back from February 24 to 28 and March 3 to 7, 2003.

Appellant submitted medical evidence in support of her claim. In a December 11, 2002 report, Dr. Jonathan T.K. Kim, an attending family practitioner, provided a November 25, 2002 date of injury, noted that appellant "works on computer" and diagnosed de Quervain's tenosynovitis of the right wrist. In a January 17, 2003 report, Dr. John R. Hannon, an attending Board-certified orthopedic surgeon, noted that, during the prior two years, appellant used a computer "continuously throughout the course of the workday" and pulled medical records with her right hand. Appellant "had a couple months' history of pain of the right hand," which "became problematic as of November 25, 2002." Dr. Hannon noted that ergonomic adjustments were made to appellant's workstation. Dr. Hannon diagnosed de Quervain's tenosynovitis of the right wrist and in periodic chart notes recommended limited duty through March 20, 2003.

In an April 14, 2003 decision, the Office accepted that appellant sustained de Quervain's tenosynovitis of the right hand and authorized a right de Quervain's release. However, by decision also dated April 14, 2003, the Office denied appellant's claim for continuation of pay from December 11, 2002 to February 23, 2003 on the grounds that the claim was one of occupational disease and not traumatic injury.

Appellant disagreed with this decision and in an April 30, 2003 letter requested reconsideration. Appellant stated that she was gathering new medical evidence for submission to the Office, but did not submit any evidence for review.

By decision dated June 15, 2003, the Office denied appellant's request for reconsideration on the grounds that appellant's April 30, 2003 letter did not raise substantive legal questions or include new and relevant evidence.

The Board finds that the Office properly denied appellant's claim for continuation of pay.

Section 8118<sup>1</sup> of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>2</sup> As an employee is not entitled to continuation of pay unless he or she has sustained a traumatic injury, it must first be determined that a traumatic injury, rather than an occupational disease, has been sustained.<sup>3</sup>

The terms "traumatic injury" and "occupational disease" are defined by regulation. Traumatic injury is defined as "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift," caused by an external force, "which is identifiable as to time and place of occurrence and member or function of the body affected."<sup>4</sup> In contrast, occupational disease is defined as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>5</sup>

Appellant alleged that she sustained a traumatic injury on November 25, 2002 due to "repetitive motion on the computer and handling case files." However, the medical record reflects that appellant's condition was produced by work factors occurring over more than one work shift. Dr. Kim, an attending family practitioner, noted in his December 11, 2002 report that appellant "work[ed] on [a] computer." Dr. Hannon, an attending Board-certified orthopedic surgeon, explained in a January 17, 2003 report that, during the prior two years, appellant had

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<sup>1</sup> 5 U.S.C. § 8118.

<sup>2</sup> Section 8122(a)(2) provides that written notice of injury was given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of a traumatic injury. 5 U.S.C. § 8119(a), (c), 8122(a)(2).

<sup>3</sup> *Richard D. Wray*, 45 ECAB 758 (1994); 20 C.F.R. § 10.220(a).

<sup>4</sup> 20 C.F.R. § 10.5(ee) (2003).

<sup>5</sup> 20 C.F.R. § 10.5(q) (2003).

used a computer continuously throughout the workday and pulled files with her right hand. This description of appellant's job duties indicates that the causative work factors occurred over a two-year period, and not only on November 25, 2002. Dr. Hannon also noted that the employing establishment made ergonomic adjustments to appellant's workstation, again indicating ongoing causative work factors occurred over more than one work shift. Dr. Hannon noted that appellant's right hand pain developed over a "couple" of months, becoming "problematic" as of November 25, 2002. As the evidence shows that appellant sustained the onset of pain some months prior to November 25, 2002 with a worsening of her condition on that date, her claim is one of an occupational disease, as it occurred over a period longer than a single workday or shift by continued or repetitive stress. Appellant, therefore, is not entitled to continuation of pay.

The Board further finds that the Office in its June 15, 2003 decision properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Act,<sup>6</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>7</sup> which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

"(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

"(ii) Advances a relevant legal argument not previously considered by [the Office]; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>8</sup>

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. No new and relevant medical evidence accompanied the April 30, 2003 reconsideration request. This is important since the outstanding issue in the case, whether or not the accepted de Quervain's tendinitis was caused by work factors during a single work shift, is medical in nature. Additionally, appellant's April 30, 2003 letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b) (2003).

<sup>8</sup> 20 C.F.R. § 10.608(b).

or fact not previously considered by the Office. For these reasons, the Office properly denied appellant's reconsideration request without conducting a merit review of the record.

The decisions of the Office of Workers' Compensation Programs dated June 15 and April 14, 2003 are hereby affirmed.

Dated, Washington, DC  
September 22, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member