



minimal strength when grasping anything, periodic aches and sharp pain in each arm to the elbow and occasional numbness and tingling of her hands and fingers were caused by typing approximately six hours a day. In support of her claim, appellant submitted correspondence from the employing establishment regarding her claim. She also submitted a narrative statement describing the causal relationship between her work duties and her carpal tunnel syndrome. A February 9, 2004 note from Dr. Stephen W. Welk, a Board-certified family practitioner, indicated that appellant suffered from work-related carpal tunnel syndrome and that she was limited to four hours a day on the keyboard.

By letter dated February 25, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim. By letter of the same date, the Office requested that Dr. Welk provide a detailed narrative medical report providing, among other things, the results of Phalen's and Tinel's testing for carpal tunnel syndrome and to address whether appellant's condition was caused by factors of her employment.

The Office received Dr. Welk's February 19, 2004 note indicating that appellant could return to full-duty work for four hours a day on March 8, 2004. The Office also received correspondence between appellant and the employing establishment regarding medical treatment she received for her carpal tunnel syndrome. Dr. Welk's February 4 and 19, 2004 progress notes revealed a diagnosis of carpal tunnel syndrome.

By decision dated March 25, 2004, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty.

In response to the Office's February 25, 2004 developmental letter, appellant submitted a March 24, 2004 letter in which she described her activities outside her federal employment. She stated that she wore braces on both arms to bed at night and provided the name and dosage of the medicine she took daily. Appellant provided the date of her next medical appointment and inquired about an "extension" for her claim.

The Office received a February 23, 2004 medical report from Dr. Dawn A. Gais, a Board-certified internist, revealing that appellant had bilateral carpal tunnel syndrome. Dr. Gais reiterated her diagnosis in her March 23, 2004 progress note.

By letter dated April 5, 2004, appellant requested reconsideration of the Office's March 25, 2004 decision. She also requested an extension until August 30, 2004 because Dr. Gais had authorized her to undergo additional testing for carpal tunnel syndrome to be performed by Dr. Robert K. Brown, a Board-certified orthopedic surgeon, on June 29, 2004.

On July 1, 2004 the Office issued a decision denying appellant's request for a merit review of her claim<sup>1</sup> on the grounds that she failed to submit any arguments or evidence in support of her request for reconsideration.<sup>2</sup>

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of the 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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 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.<sup>6</sup>

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<sup>1</sup> The Office advised that, as appellant had requested an extension of time within which to submit additional evidence, it kept her file open. The Office further stated that it attempted to contact her telephonically on July 1, 2004 to confirm whether she actually underwent an examination and whether the evidence would be submitted by the projected date of August 30, 2004. However, the Office pointed out that appellant's telephone number of record was not operative.

<sup>2</sup> Subsequent to the Office's July 1, 2004 decision, the Office received additional evidence. As this evidence was not reviewed by the Office, the Board is precluded from reviewing it for the first time on appeal. Appellant may resubmit this evidence to the Office, together with a formal written request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

### **ANALYSIS -- ISSUE 1**

Appellant submitted Dr. Welk's February 9, 2004 note which indicated that she suffers from work-related carpal tunnel syndrome. Dr. Welk's note is insufficient to establish appellant's burden because it fails to provide any medical rationale explaining how or why appellant's condition was caused by factors of her employment. Further, Dr. Welk's February 19, 2004 note which revealed that appellant could return to full-duty work on March 8, 2004 for four hours a day fails to address whether appellant's disability for work was caused by factors of her employment. Similarly, Dr. Welk's February 4 and 19, 2004 progress notes, which revealed that appellant has carpal tunnel syndrome does not address whether her condition was caused by factors of her employment.

As appellant has failed to submit rationalized medical evidence establishing that her bilateral carpal tunnel syndrome was causally related to factors of her employment in her position as a clerk stenographer-labor relations, she did not meet her burden of proof in this case.

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

To require the Office to reopen a case for merit review under section 8128 of the Act,<sup>7</sup> the Office's regulation provides that 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>8</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

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

In her April 5, 2004 letter, appellant requested reconsideration. Prior to receiving her April 5, 2004 request, the Office received Dr. Gais' February 23, 2004 medical report and March 23, 2004 progress note, which revealed that appellant has bilateral carpal tunnel syndrome. Although Dr. Gais' report and progress note constitute new evidence not before the Office at the time of its March 25, 2004 decision, they are not sufficient to require the Office to reopen appellant's claim for consideration of the merits. Dr. Gais' report and progress note do not provide any relevant information regarding the causal relationship between appellant's condition and factors of her employment. Evidence not addressing the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

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<sup>7</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>9</sup> *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

Further, appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Thus, the Board finds that she has failed to satisfy her burden of proof in this case.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1 and March 25, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member