United States Department of Labor
Employees' Compensation Appeals Board

PENNIE C. LEACHMAN, Appellant	)	
and	)	**Docket No. 05-43**
	)	**Issued: March 3, 2005**
DEPARTMENT OF THE NAVY, U.S. MARINE CORPS, WESTERN AREA COUNSELS OFFICE, Camp Pendleton, CA, Employer	)	

Appearances:
Pennie C. Leachman, Esq., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 29, 2004 appellant filed a timely appeal from a December 30, 2003 merit decision of the Office of Workers' Compensation Programs which denied her claim, and a September 3, 2004 decision which denied her request for reconsideration. Under 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 sustained an injury causally related to factors of employment; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a). On appeal appellant contends that the December 30, 2003 decision was issued in error because she had submitted medical evidence to the employing establishment and assumed it would be forwarded to the Office, and that the undue delay by the Office in responding to her reconsideration request jeopardized her case.

FACTUAL HISTORY

On October 1, 2003 appellant, then a 51-year-old attorney, filed an occupational disease claim, alleging that legal research and keyboarding caused carpal tunnel syndrome. She did not stop work. In an attached statement she contended that extensive computerized legal research and use of the computer in document preparation caused pain in both wrists, noting that a left wrist condition had been diagnosed prior to her retirement from the Navy.

In letters dated November 17, 2003, the Office requested that both the employing establishment and appellant submit information regarding the claim. The Office informed appellant that the materials she had submitted were insufficient to establish her claim and she was requested to provide additional evidence directly to the Office within 30 days from the date of the letter. This was to include data regarding the job activities she believed contributed to her condition and a comprehensive medical report from her physician which described her symptoms and included results of examinations and testing and provided a diagnosis and opinion, with medical reasons, on the cause of her condition.

By decision dated December 30, 2003, the Office denied the claim finding that, while the evidence of record established that appellant sustained the employment exposure, she did not submit medical evidence that included a diagnosed medical condition connected to the accepted trauma or exposure. The Office further noted that appellant did not respond to the November 17, 2003 letter.

On January 2, 2004 appellant requested reconsideration. She acknowledged that she should have transmitted the requested information directly to the Office and submitted additional evidence.[1] A report dated October 1, 2003 was electronically signed by Merry Johnson, an occupational therapist and, in an October 21, 2003 report, Amy S. Hecht, a nurse practitioner, noted that appellant had persistent wrist pains and a repetitive strain injury which were caused or exacerbated by keyboarding and mouse use at work. Appellant advised that she was changing the claimed condition from carpal tunnel to persistent wrist pains caused by repetitive strain injury. She also submitted page 5 only of a Department of Veterans Affairs (DVA) rating decision indicating that she had been rated to have a 10 percent disability due to a left median sensory neuropathy and a letter from the DVA dated April 26, 1999 informing her of the rating decision.

In a decision dated September 3, 2004, the Office denied appellant's reconsideration request. The Office noted that the issue in the case was medical and, because appellant did not submit evidence from a physician, the evidence submitted was immaterial and irrelevant.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(q) of Office regulations defines an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.[2] To establish that an injury was sustained in the performance of duty in an occupational

[1] Appellant also submitted an application for employment, and a copy of her resume.

[2] 20 C.F.R. § 10.5(q).

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 diagnosed condition is causally related to the employment factors identified by the claimant. 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]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[5] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant did not submit sufficient evidence to establish that she sustained an injury in the performance of duty. At the time the Office issued the December 30, 2003 decision, appellant had submitted no medical evidence. She contends on appeal that the December 30, 2003 decision was issued in error because she had submitted evidence to the employing establishment and assumed it would forward it to the Office. By letter dated November 17, 2003, the Office clearly informed appellant that she had 30 days to submit a statement identifying employment factors and a comprehensive medical report from her physician to the Office. Furthermore, in her letter requesting reconsideration on January 2, 2004, appellant acknowledged that she should have forwarded the requested evidence directly to the Office. The Board therefore finds that appellant's argument is without merit. As the record before the Office at the time of its December 30, 2003 decision did not contain sufficient medical evidence to establish the presence or existence of the disease or condition for which compensation is claimed or to establish that the diagnosed condition is causally related to the employment factors identified by the claimant, appellant failed to establish that her bilateral wrist condition was causally related to factors of employment.[7]

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[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[7] *Leslie C. Moore, supra* note 5.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (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(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[9] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[10] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[11]

ANALYSIS -- ISSUE 2

Regarding appellant's contention on appeal that the eight-month delay between her January 2, 2004 reconsideration request and the Office decision denying the request on September 3, 2004, Office procedures state that if a reconsideration decision is delayed beyond 90 days and the delay would jeopardize a claimant's ability to seek a merit review of his or her claim before the Board, the Office should conduct a merit review and issue a decision so as to protect appellant's right to appeal.[12] Although there was a delay beyond 90 days, as appellant filed her application for review on September 29, 2004, the Board has jurisdiction over the merits of the December 30, 2003 decision. Her ability to seek review of her claim by the Board was thus not jeopardized, and the Board finds the delay harmless error.[13]

On reconsideration, appellant noted that she had submitted the evidence requested in the Office's development letter to the employing establishment and acknowledged that it should have been transmitted to the Office. She thus did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[14]

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[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b).

[10] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[11] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, *Protecting Claimant's Further Appeal Rights*, Chapter 1602.9 (May 1996); *see Ronald A. Eldridge*, 53 ECAB 218 (2001).

[13] *See generally Joan F. Martin*, 51 ECAB 131 (1999).

[14] *Supra* note 8.

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted evidence regarding a DVA rating decision and treatment notes from Ms. Hecht, a nurse practitioner, and Ms. Johnson, an occupational therapist. However, these reports do not constitute competent medical evidence. Section 8101(2) of the Act defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[15] A nurse is not a "physician" as defined under the Act and thus cannot render a medical opinion on the causal relationship between a physical condition and accepted employment factors.[16] Ms. Hecht's report is not relevant as medical evidence to the underlying claim. Ms. Johnson's report is similarly not relevant not relevant to the underlying medical issue because a therapist is not a physician as defined by section 8101(2) and is not competent to render a medical opinion.[17]

Lastly, there is no indication that the DVA rating was rendered by a physician. Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.[18]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her bilateral wrist condition is causally related to factors of employment. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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[15] 5 U.S.C. § 8101(2).

[16] *Id.; Vincent Holmes*, 53 ECAB 468 (2002).

[17] *James Robinson, Jr.*, 53 ECAB 417 (2002).

[18] The Board notes that concurrently with her appeal to the Board, on September 23, 2004 appellant requested reconsideration with the Office. The Board and the Office may not have concurrent jurisdiction over the same issue in the same case. *Linda Thompson*, 51 ECAB 695 (2000). Furthermore, the Board cannot consider the evidence submitted with appellant's September 23, 2004 reconsideration request as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c) Appellant retains the right to resubmit this and other evidence to the Office along with a valid request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 3, 2004 and December 30, 2003 be affirmed.

Issued: March 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member