United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 10-2014**
	)	**Issued: June 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2010 appellant filed a timely appeal of a February 4, 2010 decision of the Office of Workers' Compensation Programs, denying her application for reconsideration without merit review of the claim. 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 February 4, 2010 nonmerit decision. Since more than one year has elapsed between the last merit decision on August 1, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. § 501.3(e).[2]

ISSUE

The issue is whether the Office properly denied appellant's application for reconsideration without merit review of the claim.

[1] 5 U.S.C. § 8101 *et seq.*

[2] For final adverse Office decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2). For final adverse Office decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

The case was before the Board on a prior appeal. In a decision dated June 9, 2009, the Board affirmed an Office merit decision dated August 1, 2007, denying appellant's claim for a recurrence of disability commencing March 1996.[3] The Board also affirmed a November 30, 2007 Office decision denying merit review of the claim. The history of the case provided by the Board in its prior decision is incorporated herein by reference.

In a letter dated September 14, 2009, appellant requested reconsideration of her claim. On October 21, 2009 the Office received additional evidence. With respect to new medical evidence, the reports submitted include a treatment note dated July 3, 1996 from Dr. Richard Koerker, a neurologist, who stated that appellant had a history of right hand pain with repetitive movements. According to Dr. Koerker, appellant stated that she had been dismissed from the employing establishment due to a "dead right hand" that prohibited use of the right hand. He further stated that she "refers to injury in the [employing establishment], but the injury appears to be repetitive movements needed in either typing or shuffling mail. [Appellant's] speed in typing has gone down to under 30 words per minute."

In a report dated August 21, 1997, Dr. Charles Paxon, an internist, stated that appellant had reported hand dysfunction since the middle 1980's. He noted that she worked at the employing establishment after 1991, and she recalled an injury, but could not recall details other than becoming aware of pain at the base of the neck. According to Dr. Paxon, appellant believed that "this problem then evolved into episodic hand dysfunction again much like it occurred in the Air Force." He stated that the right hand dysfunction did not have a clear-cut diagnosis, and it may relate to the neck dysfunction but he could not make that determination.

In a report dated October 1, 1998, Dr. Daniel Phan, an internist, stated that appellant was seen for right hand and back pain. He reviewed medical records and provided a history that she hurt her right hand during military service from 1984 to 1990. Dr. Phan stated that appellant developed neck pain while working for the employing establishment from 1992 to 1994, when there was frequent use of her arms and hands, with frequent turning of the neck. He provided results on examination and stated that she had nonspecific right hand, neck and mid-back pain. Dr. Phan found appellant's gross and fine manipulation were intact, but stated that, with her history of right hand pain, she should avoid "use" that would require prolonged use of the right arm.[4] In a brief note dated October 27, 1998, a physician whose signature is illegible stated that appellant should avoid prolonged or repetitive use of the right arm.

By decision dated February 4, 2010, the Office determined that appellant's application for reconsideration and the evidence submitted was insufficient to warrant merit review of the claim.

[3] Docket No. 08-2067 (issued June 9, 2009). As the Board noted, appellant's claim was accepted for bilateral tenosynovitis of the hand and wrist, with appellant resigning from federal employment on May 9, 1994.

[4] The word "use" was replaced by a handwritten "work," although it is not clear who made the alteration.

LEGAL PRECEDENT

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[5] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[6]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[7]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but 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.[8]

ANALYSIS

Appellant filed an application for reconsideration without offering a specific argument with respect to a point of law or legal argument. She 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. Appellant did submit additional evidence with respect to her claim for a recurrence of disability. The issue is whether there was evidence that constitutes relevant and pertinent evidence not previously considered by the Office.

The underlying merit issue was a claim for a recurrence of disability. On the October 2, 2006 claim form appellant had identified the date of the recurrence as March 1996 and the date she stopped working after the recurrence as February 13, 1998. Since her federal employment had ended in May 1994, it is not entirely clear whether she was claiming an employment-related disability from March 1996 or from February 13, 1998. To require the Office to reopen the case for merit review, it is not necessary for appellant to establish a recurrence of disability. Appellant must, however, submit evidence that is new, relevant and pertinent to the issue.

A review of the medical evidence submitted on reconsideration does not establish that it is new, relevant and pertinent to the recurrence of disability issue. Dr. Koerker's July 3, 1996

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.605 (1999).

[7] *Id*. § 10.606(b)(2).

[8] *Id*. § 10.608.

note does not discuss a disability for work. He referred to a history of a right hand injury, without providing any additional relevant information to the issue presented. In his August 21, 1997 report, Dr. Paxon refers to a right hand condition that preexisted work at the employing establishment, and then indicated that appellant reported neck symptoms while working at the employing establishment. He was uncertain of the right hand diagnosis or if the condition was related to a neck condition. There was no opinion as to disability for federal employment or any opinion as to causal relationship between any disability and the employment injury.

Dr. Phan stated in his October 1, 1998 report that appellant should avoid using her right arm for prolonged periods. He also indicated that gross and fine manipulation were intact. Dr. Phan does not discuss appellant's federal employment and it is not clear whether he felt she was disabled for her date-of-injury position. In addition, he does not provide an opinion regarding the right hand pain and the employment injury. Based on the history provided, Dr. Phan appeared to relate any right hand symptoms to military service prior to work at the employing establishment.

The remainder of the medical evidence submitted included treatment for an emotional condition, which is not an accepted injury for this claim, and evidence that is either unsigned or not prepared by a physician under the Act.[9] The Board finds that appellant did not submit evidence that was new, relevant and pertinent to the issue presented. Since appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), the Office properly denied the application for reconsideration without merit review of the claim.

On appeal, appellant noted that she submitted evidence on October 21 and November 3, 2009, and submitted a November 20, 2009 letter to the Office. The evidence of record before the Office at the time of the February 4, 2010 Office decision was considered on this appeal. For the above reasons, the Board finds that appellant did not meet the requirements for a merit review of her claim.

CONCLUSION

The Board finds that the Office properly determined that appellant's application for reconsideration was insufficient to warrant a merit review of the claim.

[9] Medical evidence from a physician's assistant is not competent medical evidence as a physician's assistant is not a physician under 5 U.S.C. § 8101(2). *See George H. Clark*, 56 ECAB 162 (2004). A medical report lacking proper identification is of no probative medical value. *Thomas L. Agee*, 56 ECAB 465 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2010 is affirmed.

Issued: June 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board