

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMA L. SANTIAGO and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, San Juan, P.R.

*Docket No. 96-563; Submitted on the Record;
Issued August 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are whether appellant established that she sustained a recurrence of disability causally related to her August 27, 1990 work injury and whether the refusal of the Office of Workers' Compensation Programs, in its decision dated November 20, 1995, to reopen appellant's claim for merit review constituted an abuse of discretion.

On August 27, 1990 appellant, then a 42-year-old sorting machine operator, filed a notice of traumatic injury, claiming that she hurt her back and right hand and ankle when she fell on the floor after her chair rolled back as she was trying to sit down. The Office accepted the claim for a right wrist and ankle sprain as well as a lumbosacral sprain.

Appellant returned to light duty but filed a notice of recurrence of disability on November 1, 1990, claiming severe back pain. The Office accepted this claim for a herniated nucleolus pulposus and paid appropriate compensation. Appellant filed a second recurrence of disability on March 19, 1992, claiming that she had worked with her back pain, but her condition had worsened so that she could not sit or stand for more than 15 minutes without discomfort. On June 30, 1992 appellant accepted a modified clerk position, working for four hours a day.

On August 11, 1992 the Office denied appellant's recurrence of disability claim. Appellant's first request for reconsideration was denied on January 28, 1993. Her second request was granted on August 31, 1993; the Office also accepted the claim for a depressive reaction and paid appropriate compensation.

On December 17, 1993 appellant filed a third notice of recurrence of disability, claiming that on October 28, 1993 she sustained a depressive episode resulting from her supervisors' refusal to deal with her compensation claim in a professional manner. The Office informed appellant on January 5, 1994 that she needed to submit the evidence requested on the enclosed checklist and medical evidence showing that she could not perform the duties of her modified clerk position or that the job's requirements had changed.

On May 17, 1994 the Office denied the claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the initial injury and the present claimed condition. The Office noted that appellant's reaction to the supervisors' handling of her claim was self-generated and the record revealed no administrative abuse or error. Appellant did not appeal this decision.

On October 24 and November 29, 1994 appellant filed two more notices of recurrence of disability, claiming that on October 8, 1994 she was working in front of a large air conditioner that froze all her bones and caused pain in her back and on November 17, 1994 her back condition had worsened and her work requirements were exacerbating her symptoms. On November 8 and December 27, 1994 the Office informed appellant that she needed to submit medical evidence showing that she could not perform the light duty because of a change in the nature and extent of her injury-related condition or a change in the physical requirements of the light-duty position.

On February 13, 1995 the Office denied the claim on the grounds that the evidence failed to demonstrate a causal relationship between appellant's back pain and the initial injury. The Office noted that the medical reports received in support of the claim were based solely on appellant's subjective complaints of pain.

Appellant requested reconsideration and submitted the February 2, 1995 report of Dr. Heriberto A. Acosta, a neurologist, who stated that as a result of the August 27, 1990 accident appellant had developed a chronic pain syndrome with multiple clinical symptoms, as seen during her last evaluation in January 1995, which were related to the initial injuries sustained in the 1990 fall.

On November 20, 1995 the Office denied appellant's request on the grounds that appellant's October 15, 1995 letter requesting reconsideration neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of its prior decision.

The Board finds that appellant failed to meet her burden of proof in establishing that her recurrences of disability in October and November 1994 were causally related to the initial 1990 injury.¹

Under the Federal Employees Compensation Act,² an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.³ As part of this burden the employee must submit rationalized medical evidence from a

¹ On May 23, 1995 appellant submitted her sixth notice of recurrence of disability, claiming that she was suffering from an acute episode of depression caused by financial distress and treatment from a supervisor who mishandled her pay check stub. This claim is not before the Board on the present appeal.

² 5 U.S.C. §§ 8101-8193.

³ *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,⁴ and supports that conclusion with sound medical reasoning.⁵

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁶

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.⁹

In support of the claimed recurrences, appellant submitted the results of a magnetic resonance imaging (MRI) scan on November 22, 1994 showing degenerative changes and a herniated disc, two notes dated October 26 and November 21, 1994 and two CA-20a medical forms dated November 26 and December 9, 1994, all completed by Dr. Acosta, who diagnosed low back pain related to appellant's employment. The earlier note stated that appellant had been treated in the emergency room on October 7, 1994 and was off work for a week. The later note stated that appellant's pain had gotten worse over the past two to three weeks and was clinically compatible with an L5-S1 radiculopathy.

None of this evidence is sufficient to meet appellant's burden of proof because there is no history of the alleged recurrences, or objective medical findings, or any description of a change in the nature and extent of the work-related injury. The reports provide no rationale for relating appellant's back condition to her employment¹⁰ and are based solely on appellant's complaints

⁴ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁵ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁶ 20 C.F.R. § 10.121(b).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹⁰ See *Ruth S. Johnson*, 46 ECAB 237, 242 (1994) (finding that a causation opinion that consists only of checking "yes" to a form question has little probative value and is thus insufficient to establish causal relationship).

of pain.¹¹ Thus, this evidence does not constitute a rationalized medical opinion connecting the recurrences of disability to the initial 1990 work injury.¹²

Twice the Office informed appellant of the deficiencies in the medical evidence needed to establish her recurrences of disability. However, she failed to submit the medical evidence necessary to establish a causal connection between her current back condition and the accepted work injury. Therefore, the Board finds that the Office properly denied her claim.¹³

The Board also finds that the Office did not abuse its discretion in declining to reopen appellant's case for merit review.¹⁴

Section 8128(a) of the Act¹⁵ provides for review of an award for or against payment of compensation. Section 10.138, the statute's implementing regulation, requires a written request that specifies the issues which the claimant wishes the Office to review and the reasons why the decision should be changed.¹⁶ Thus, a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered, or by submitting relevant and pertinent evidence not previously submitted.¹⁷

Section 10.138(b)(2) provides that if a request for review of the merits of the claim does not meet at least one of the three requirements, the Office will deny the request without reviewing the merits.¹⁸ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to re-open a case for further consideration of the merits pursuant to section 8128.¹⁹

¹¹ See *Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the work day is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967) (same).

¹² See *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

¹³ See *Jose Hernandez*, 47 ECAB ____ (Docket No. 94-1089, issued January 23, 1996) (finding that despite a request from the Office, appellant failed to submit a rationalized medical opinion showing that the claimed recurrence was related to his employment injury).

¹⁴ The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Because appellant filed her notice of appeal on December 4, 1995, the Board has jurisdiction of the Office decisions dated February 13 and November 20, 1995.

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.138(b)(1); *John F. Critz*, 44 ECAB 788, 793 (1993).

¹⁷ 20 C.F.R. § 10.138 (b)(1)(i)-(iii); *Willie H. Walker, Jr.*, 45 ECAB 126, 131 (1993).

¹⁸ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

¹⁹ *John E. Watson*, 44 ECAB 612, 614 (1993).

The only limitation on the Office's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts. Merely showing that the evidence could be construed to produce a contrary factual conclusion is insufficient to establish abuse of discretion.²⁰

Appellant submitted a February 2, 1995 narrative report from Dr. Acosta. The Board finds that Dr. Acosta's opinion relating appellant's continuing back pain to the 1990 injury is insufficient to require the Office to reopen appellant's case for merit review. Dr. Acosta described the October 24, 1994 air conditioning incident but does not explain how appellant's exposure caused muscle spasms which resulted in severe pain. Further, Dr. Acosta diagnosed chronic pain syndrome with multiple clinical symptoms but offered no rationale for relating these conditions to the fall at work in 1990.²¹ Finally, Dr. Acosta's provided no bridging symptoms in support of the requisite causal relationship.²²

Inasmuch as appellant has failed to provide the medical evidence necessary to meet her burden of proof in establishing that her recurrences of disability were causally related to the initial work injury, the Board finds that the Office properly denied her claim.

²⁰ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²¹ *See Jean Culliton*, 47 ECAB ____ (Docket No. 94-1326, issued August 26, 1996) (finding that a physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician).

²² *See Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992) (documented evidence of bridging symptoms supports causal relationship of recurrence to original injury).

The November 20 and February 13, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member