

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JILL P. MOONEYHAM and DEPARTMENT OF THE ARMY,
Fort Jackson, S.C.

*Docket No. 96-798; Submitted on the Record;
Issued March 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof in establishing a recurrence of disability causally related to her July 28, 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied merit review of appellant's claim pursuant to section 8128 of the Federal Employees' Compensation Act.

On July 23, 1993 appellant, then a 58-year-old classification clerk, filed a traumatic injury claim, alleging that she injured her right knee and bruised the upper right side of her back when she slipped on the floor near a water fountain. Appellant stopped work on August 3, 1993 and returned to work on August 6, 1993. The Office accepted appellant's claim for thoracic strain. On August 30, 1994 appellant filed a claim for recurrence of disability, alleging that she had never recovered from her original employment injury. On January 13, 1995 the Office denied appellant's claim for recurrence of disability on the grounds that there was no bridging medical evidence of treatment between her August 6, 1993 medical release from treatment and her medical treatment on December 27, 1993 and that the medical evidence submitted was insufficient to establish that the claimed condition was causally related to the accepted employment injury. By merit decision dated March 31, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification. By decision dated December 20, 1995, the Office denied appellant's second request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of the prior decision.

The Board has carefully reviewed the entire case record and finds that appellant has not established a recurrence of disability causally related to the July 28, 1993 employment injury.¹

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.² This burden included the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In the present case, appellant has not submitted any rationalized medical evidence which relates her claimed condition to her original accepted employment injury of thoracic strain. Appellant submitted several reports by Dr. J. Talley Parrott, a Board-certified orthopedic surgeon who began treating appellant on December 27, 1993. In a report dated December 27, 1997, after noting a history of injury to appellant's right side after she slipped on a waxed floor, Dr. Parrott reported continued pain in appellant's right side and lower back. He diagnosed chronic lumbar strain secondary to work-related trauma. Dr. Parrott prescribed physical therapy, as needed. In reports dated June 28 and July 12, 1994, Dr. Parrott reiterated that appellant supplied a history of injury to her back and continued low back pain. He indicated that his findings on examination of appellant were consistent with the history provided.⁴ In a final report dated February 13, 1995 by Dr. Parrott, he reiterated his diagnosis of chronic lumbar strain secondary to work-related trauma and noted that "the evidence in almost every case of this kind, which is usually irrefutable and unquestioned, is the history of the patient." He concluded that it was not his job to question the veracity of the patient and he had no reason to not believe her statements. None of the reports by Dr. Parrott is sufficient to discharge appellant's burden of proof since he has not in any way related appellant's claimed condition of chronic lumbar strain or low back pain to the accepted employment injury nor provided a reasoned opinion relating the diagnosed condition to the accepted employment incident. Moreover, Dr. Parrott's reports are also of limited probative value since he relies on an inaccurate history of injury as he seems to be under the impression that appellant initially injured her lower back when she slipped on July 28, 1993.⁵ The August 30, 1993 note by Dr. W.M. Bryan, Jr., a Board-certified obstetrician and gynecologist, which indicated that he had referred appellant to Dr. Parrott in response to a

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on January 22, 1996, the only decisions before the Board are the Office's March 31 and December 20, 1995 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *John E. Blount*, 30 ECAB 1374 (1979).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ Although in the July 12, 1994 report, Dr. Parrott provided an impression of a "normal neck" in a later submission of the same report he indicated that he had not treated appellant for her neck and had been treating her for her lower back throughout the treatment process.

⁵ *James A. Wyrich*, 31 ECAB 1805 (1980).

reported fall at work, cannot meet appellant's burden of proof inasmuch as Dr. Bryan does not address appellant's current condition or relate her claimed condition to her accepted employment injury. In his September 27, 1994 report, Dr. R.C. Mooneyham, a chiropractor, opined that appellant "sustained strain/sprain injuries to the thoracic lumbar paravertebral tissues" and that "due to continued work and the necessities of daily life they have not restabilized." Pursuant to section 8101(2) of the Federal Employees' Compensation Act, "[t]he term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). Thus, Dr. Mooneyham is not considered a physician within the meaning of the Act since he did not diagnose a subluxation of the spine as demonstrated by x-ray.⁶ Similarly, the opinion of Geraldine Hood, a registered nurse, who advised that appellant had "reported a persistent back discomfort since the injury that had not resolved" cannot be construed as competent medical evidence regarding the cause of her claimed condition since a nurse is not a physician within the meaning of the Act and, therefore, her opinion does not constitute probative medical evidence in this regard.⁷ Appellant has not met her burden of proof in establishing a recurrence of disability causally related to her July 28, 1993 employment injury.

The Board further finds that the Office properly denied appellant's second request for reconsideration and merit review of her claim.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

With her request for reconsideration dated December 12, 1995, appellant resubmitted the February 13, 1995 medical report by Dr. Parrott and the September 27, 1994 report by Dr. Mooneyham. She also submitted a copy of the previously issued January 13, 1995 order in her case, the Office's denial of her request for reconsideration of her medical expenses in relation to her claimed condition, and letters from appellant dated February 23 and June 27, 1995. In her letters she argues that Dr. Parrott's reports are sufficient to establish a causal relationship between her claimed condition and her work injury, that the Office must be

⁶ *Linda L. Mendenhall*, 41 ECAB 532 (1990).

⁷ *Joseph N. Fassi*, 42 ECAB 677 (1991); *Betty G. Myrick*, 35 ECAB 922 (1984).

⁸ 20 C.F.R. § 10.138(b)(2).

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹⁰ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

confusing her case with someone else as she had not been advised that it would be deemed inactive as October 1, 1993 and there had been some confusion in the payment of bills, and that the Office was in error in rejecting her claim for recurrence based on the fact that the later physicians' reports were not in agreement with the initial physician's diagnosis of thoracic strain since she was not seen by a doctor after the July 28, 1993 incident, but by a physician's assistant. The evidence submitted by appellant is not sufficient to warrant review of her case by the Office since it is either repetitious or irrelevant to the central issue in her case. The reports by Drs. Parrott and Mooneyham are duplicative and have been previously considered by the Office. While the arguments made by appellant do urge that she sustained a recurrence of disability, she does not address the deficiencies in the medical evidence which she submitted, as noted in the Office decisions. Thus, she has not provided supplemental medical evidence addressing whether her claimed condition is causally related to her accepted employment injury and her arguments are therefore irrelevant. Appellant has not submitted evidence that requires that the case record be reopened.

The decisions of the Office of Workers' Compensation Programs dated December 20 and March 31, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 9, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member