

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANIE S. JUE and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 99-2485; Submitted on the Record;
Issued April 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

On April 8, 1987 appellant, a 54-year-old distribution clerk/machine operator, filed a claim for benefits, alleging that she sustained a degenerative joint condition in both hands caused by factors of her employment. In a decision dated October 21, 1987, the Office denied the claim. By letter dated November 3, 1987, appellant requested reconsideration. By decision dated January 26, 1988, the Office vacated the October 21, 1987 decision and remanded the case for further development of the medical evidence. On November 30, 1988 the Office accepted the claim for degenerative arthritis in the left hand. The Office subsequently expanded its acceptance to bilateral carpal tunnel syndrome. Appellant has not worked since July 19, 1988. The Office paid appropriate compensation for total disability and placed her on the periodic rolls.

In order to determine appellant's current condition and ascertain her capacity to return to work, the Office referred appellant for a medical examination with Dr. Robert A. Fox, Board-certified in psychiatry and neurology, on July 11, 1997.

In a report dated July 11, 1997, Dr. Fox noted appellant's complaint of a constant low level of pain and burning in the hands, wrists and forearms, intermittently radiating to the shoulders. He stated that these symptoms were aggravated by repetitive use of the fingers and wrists or reaching at or above the shoulder level, pushing, pulling, or activities involving comparable physical effort. Dr. Fox advised appellant could work eight hours per day within the following restrictions: no lifting exceeding five pounds, four times per hour; no reaching above the shoulder level; no repetitive use of the hands for pincer movements or fine finger movements; and no actions requiring flexion and extension of the wrists.

On December 8, 1997 the employing establishment described a modified distribution clerk position for appellant within the restrictions outlined by Dr. Fox. By letter dated

December 16, 1997, he indicated his approval of the modified clerk position, with the qualifications that appellant could work no longer than five hours per day and should wear a headset while answering the telephone.

By letter dated January 15, 1998, the employing establishment offered appellant the modified distribution clerk position based on the restrictions outlined by Dr. Fox. The position involved working in a reception area, where she would greet employees, answer the telephone, route telephone calls to the appropriate place, page people on the public address system, take occasional messages and route messages to the appropriate place.

By letter dated January 15, 1998, the Office advised appellant that it found the job offer suitable, that she had 30 days to accept the employing establishment's modified job offer and that if she refused the job, her compensation would be terminated pursuant to section 8106(c)(2).¹

In a report dated January 28, 1998, Dr. Fox stated that he had examined appellant the previous day and noted continuing neck and right upper extremity problems with repetitive use. He further stated:

“[Appellant] reviewed the recent job offer. I was in error in terms of her ability to answer [tele]phones and take messages. I stated in my original consultation report that she had an eighth grade education. However, this was all in Chinese and she speaks very poor English and has difficulty with comprehension and writing. Hence, it would be very difficult for her to take messages unless she returned to school to learn English as a second language. Based on her limited education and age of 64 years, I wonder if that would be worthwhile.”

By letter dated January 30, 1998, appellant rejected the modified job offer and noted that she only had an eighth grade education, which she acquired in China.

In a memorandum received by the Office on February 4, 1998, the employing establishment advised the Office to issue a letter informing appellant that she had 15 days in which to accept the modified job offer. The letter stated that appellant was sufficiently proficient at reading and speaking English to have been employed by the employing establishment since 1969 and that her employment application indicated she graduated from high school in 1951.

By letter dated February 5, 1998, the Office advised appellant that her reason for rejecting the job offer was unacceptable and that she had 15 days to accept the modified clerk position or have her compensation terminated.

In a handwritten note dated February 11, 1998, appellant informed the Office that she was refusing the job offer and indicated her intention to apply for disability retirement. Appellant also telephoned the Office on February 17, 1998 and reiterated that she would not accept the job offer because of her advanced age and language skills. In the Office memorandum of telephone call, the claims examiner indicated that he perceived no language

¹ 5 U.S.C. § 8101(c)(2).

problem, as appellant had no difficulty understanding what was being said and that he had no difficulty understanding her on the telephone.

By decision dated March 4, 1998, the Office terminated appellant's compensation based on her refusal to accept a suitable job pursuant to section 8106(c)(2).

By letter dated January 2, 1999, appellant's representative requested reconsideration. The representative submitted no new evidence except for a copy of appellant's retirement application dated March 2, 1998. He argued that the Office erred by failing to consider Dr. Fox's January 28, 1998 report indicating he had erred regarding appellant's ability to answer the telephone and take telephone messages and asserted that this constituted a retraction by Dr. Fox of his approval of the modified job offer. The representative also argued that Dr. Fox's July 11, 1997 report was not current because it was rendered six months prior to the termination decision; that appellant's reliance on this stale medical evidence should be excused because she was not advised of any finding of deficiency by the Office based on the available medical evidence on which she relied; and that her decision to retire on March 2, 1998 should not be construed as a refusal of the suitable job offer.

By decision dated April 30, 1999, the Office denied appellant's application for review on the ground that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

In the present case, the March 4, 1998 decision terminating appellant's benefits was issued over one year prior to her appeal. For this reason, the Board does not have jurisdiction to review the March 4, 1998 termination.²

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³

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.⁴

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either, previously considered and rejected by the Office in prior decisions, or is not pertinent to the issue on appeal.

² See 20 C.F.R. § 501.2(c).

³ 20 C.F.R. § 10.607(b)(1). See generally 5 U.S.C. § 8128(a).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

Thus, her request did not contain any new and relevant evidence for the Office to review. The January 2, 1999 reconsideration request failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant offered no additional evidence with her request for reconsideration to corroborate her contention that her English comprehension and communication skills were not sufficiently developed to perform the duties of answering the telephone, forwarding calls and messages and greeting employees at the front desk.⁵ Although Dr. Fox qualified his approval of the modified job in his January 28, 1998 report, based on appellant's alleged deficiencies in language skills, the Office considered the evidence of record and found that her purported reason for refusing the job did not constitute sufficient justification. Nothing in Dr. Fox's report revealed a change in her physical limitations. Rather, the physician merely addressed her language skills. Appellant's arguments that the modified job was not suitable because Dr. Fox's report was issued six months prior to the offer and that her refusal to accept the offer was reasonable because she was applying for retirement were neither pertinent nor relevant to the issue at hand. The Office located a suitable, modified job based on the limitations set forth by Dr. Fox. Appellant has submitted no new medical evidence indicating that Dr. Fox retracted in any way his physical limitations regarding the use of her hands. His report is sufficiently contemporaneous with the termination decision to be given probative weight.⁶ Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

⁵ Although appellant contended that she only had an eighth grade Chinese education, she stated in her September 21, 1967 application for employment with the employing establishment that she graduated from a Chinese high school in 1951.

⁶ A determination of physical disability for retirement purposes is not determinative of the extent of physical impairment or loss of wage-earning capacity for compensation purposes. See *Stephen R. Lubin*, 43 ECAB 564 (1992).

The April 30, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 2, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member