U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN E. PUTNAM and DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Jacksonville, FL

Docket No. 01-792; Submitted on the Record;
Issued November 9, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's November 16, 2000 request for reconsideration.

On August 14, 1995 appellant, then a 50-year-old social worker, injured her right knee at work when she caught her foot on a chair. The Office accepted her claim for right knee sprain and authorized an October 24, 1995 arthroscopic partial medial meniscectomy and chondroplasty of the medial femoral condyle.

Appellant's orthopedic surgeon, Dr. Philip R. Hardy, prescribed two pair of orthopedic shoes and a TENS unit as "medically necessary."

On November 18, 1999 an Office medical adviser reported as follows:

> "This patient has an accepted condition of torn medial meniscus. The treating physician wants her to have orthopedic shoes with orthotics to lessen the wear and tear on her knee. I feel this is a good idea but it cannot be approved for the following reasons: (1) It is not proven to be effective. (2) It is not related to the accepted condition. (3) Its potential for abuse is excessive."

In a decision dated December 22, 1999, the Office denied authorization for orthopedic shoes.

In a December 8, 1999 report, received by the Office on May 23, 2000, Dr. Hardy explained that appellant had multiple allergies, including aspirin, nonsteroidal anti-inflammatories and analgesics. She had a reaction to steroids in the past. She had a significant history for diabetes mellitus, hypertension and a significant pulmonary condition with asthma, making her a "very high risk surgical candidate." He reported that appellant was unable to take most medication that would be of benefit in her condition.

After describing his findings on physical examination, Dr. Hardy diagnosed post-traumatic arthritis, right knee, with medial compartment wear. He stated:

> "I would highly recommend approval for the replacement custom orthopaedic shoes with orthotic inserts due to her high risk as a surgical candidate and since she is unable to take anti-inflammatory medications. The patient is once again stressed on weight reduction and to maintain a home exercise program for maintenance of range of motion and strength of her lower extremities. She will return in six months for further follow-up."

On November 16, 2000 appellant requested reconsideration. She explained the reason she needed the corrected shoes and questioned the potential for abuse.

In a decision dated December 1, 2000, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted in support of appellant's request was cumulative.

An appeal to the Board must be mailed no later than one year from the date of the Office's final decision.[1] Because appellant mailed her January 23, 2001 appeal more than one year after the Office's December 22, 1999 decision denying authorization for orthopedic shoes, the Board has no jurisdiction to review that decision. The only decision that the Board may review is the Office's December 1, 2000 decision denying appellant's November 16, 2000 request for reconsideration. Therefore, the only issue before the Board is whether the Office abused its discretion in denying that request.

The Board finds that the Office acted within its discretion in denying appellant's November 16, 2000 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations[2] provides that an application for reconsideration, including all supporting documents, must be submitted in writing and 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 new evidence not previously considered by the Office. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

Appellant's November 16, 2000 request for reconsideration fails to meet at least one of the standards described. The issue addressed by the Office's December 22, 1999 decision is a medical one: whether the orthopedic shoes prescribed by appellant's qualified physician are, in

[1] 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

[2] 20 C.F.R. § 10.606(b).

[3] *Id.* § 10.608.

the Office's consideration, likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of any monthly compensation.[4] Appellant's lay opinion on the need for orthopedic shoes, or the potential for abuse, is irrelevant. The record does contain a December 8, 1999 report from Dr. Hardy, but this evidence fails to explain how orthopedic shoes would likely give relief from residuals of the accepted employment injury, reduce the degree or the period of any disability resulting from the accepted employment injury, or aid in lessening the amount of any monthly compensation. The report, therefore, is not relevant or pertinent to the issue decided by the Office's December 22, 1999 decision.

Because appellant's request fails to meet at least one of the standards for obtaining a merit review of her claim, the Office acted within its discretion in denying her request.

The December 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[4] *Linda Holbrook*, 38 ECAB 229 (1986); 5 U.S.C. § 8103(a).