

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MITZI M. CRENSHAW and U.S. POSTAL SERVICE,
POST OFFICE, Bell Gardens, CA

*Docket No. 01-897; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to wage-loss compensation due to disability from work from May 13 to August 20, 2000 causally related to her accepted employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Office accepted that appellant sustained carpal tunnel syndrome in the performance of her duties as a letter carrier (technician) and paid compensation for temporary total disability from April 20 to May 12, 2000 based on the employing establishment's statement that there was no light-duty work available for her during that time period.

On June 8, 2000 appellant filed a claim for wage loss from May 10 to June 20, 2000.

By decision dated August 9, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to show that she was totally disabled from May 10, 2000 "onward, up to the date of your left carpal tunnel surgery." Appellant subsequently filed a request for reconsideration on September 25, 2000, which the Office denied on January 9, 2001, in a nonmerit decision on the grounds that the evidence submitted in support of her request was irrelevant and immaterial and therefore insufficient to warrant a merit review.

The Board finds that appellant has not established that she is entitled to continuing compensation from May 5 to August 20, 2000.¹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to

¹ Appellant submitted additional claims for wage loss to August 20, 2000.

establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In this case, appellant submitted reports from Dr. Vito J. Caruso, an orthopedic surgeon and appellant's treating physician. In his June 22, 2000 report, Dr. Caruso stated that appellant had carpal tunnel syndrome and that surgery should be performed because of the failure of conservative treatment to redress her condition. In his July 6, 2000 report, Dr. Caruso stated that the Office should authorize further surgery for appellant and that the claims examiner was wrong to assume that appellant could work prior to May 5, 2000. Neither of these reports provides a rationalized medical opinion establishing appellant's total disability from May 5 to August 20, 2000.

The Board finds that, inasmuch as appellant did not submit medical evidence which supports her claim that her work-related injury resulted in disability from work from May 13 to August 20, 2000, she has failed to establish entitlement to wage loss for that time period.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.³

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵

In her September 25, 2000 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a point of law nor did she advance a point of law or fact not previously considered by the Office. In support of her request for reconsideration, appellant's new evidence consisted of an August 17, 2000 report from Dr. Caruso and a September 1, 2000 report from Dr. Navid Ghalambor, a colleague of Dr. Caruso and an orthopedic surgeon. In his August 17, 2000 report, Dr. Caruso stated that appellant's carpal tunnel syndrome was deteriorating, and that he placed her on total disability based on anticipated delays in scheduling surgery. This report does not establish that appellant was totally disabled from May 5 to August 20, 2000, because it does not provide a rationalized medical opinion establishing that appellant was totally disabled for that time period. Further, Dr. Navid Ghalambor's

² *Cloteal Thomas*, 43 ECAB 1093 (1992); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

September 1, 2000 report notes appellant's diagnosis and that she was totally disabled at that time. However, his report also lacks a rationalized medical opinion establishing that her total disability was causally related to her work-related injury and that she was disabled during the claimed time periods.

Abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁶ Appellant has made no such showing here and thus the Board finds that the Office properly denied her application for reconsideration of her claim. For these reasons, the Office's refusal to reopen the case for a merit review did not constitute an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated January 9, 2001 and August 9, 2000 are affirmed.

Dated, Washington, DC
October 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ *Rebel L. Cantrell*, 44 ECAB 660 (1993).