U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STELLA M. BOHLIG and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

Docket No. 00-749; Submitted on the Record;
Issued February 8, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly declined to authorize Martinelli Sports Therapy as a facility to provide physical therapy to appellant for her work-related injuries; and (2) whether the Office abused its discretion in denying appellant's request for further review of her case on its merits under 5 U.S.C. § 8128.

Appellant, a 33-year-old letter carrier, filed a Form CA-2, notice of occupational disease, indicating that her employment (specifically carrying mail on her left arm and hand and carrying the mail satchel on her left shoulder) caused carpal tunnel and cubital tunnel syndromes. She noted that she first realized her conditions were related to her employment in November 1994. The Office accepted appellant's claim for left elbow tendinitis, bilateral carpal tunnel syndrome, right wrist tendinitis and left elbow entrapment syndrome. The Office also authorized and accepted a left ulnar nerve decompression surgical procedure performed on December 29, 1995. Subsequent conditions accepted by the Office were left shoulder impingement syndrome, left ulnar neuropathy and mild right neuropathy. Appropriate compensation benefits were paid.

Following appellant's release for eight hours of work by an independent medical examiner, the employing establishment made a modified-duty job offer on August 14, 1998 for the position of distribution clerk. By decision dated September 11, 1998, the Office terminated appellant's monetary benefits finding that she refused a suitable job offer under 5 U.S.C. § 8106(c)(2). The Office noted that appellant remained entitled to medical treatment for her work-related injuries.

By letter dated October 5, 1998, the Office accepted Dr. Stephen R. Waldman, a Board-certified neurologist, as appellant's treating physician. The letter advised that physical therapy was authorized pursuant to Dr. Waldman's request for three times a week for three weeks. It further noted that appellant was expected to arrange her physical therapy at the end of her work schedule or after working hours.

In an October 26, 1998 letter, appellant inquired why she was denied authorization for care with Martinelli Sports Therapy and requested a written letter of denial from the Office for this service. By decision dated December 4, 1998, the Office denied authorization of Martinelli Sports Therapy as the institution to provide physical therapy for appellant's work-related conditions. The Office related that a second opinion physician found physical therapy was not appropriate to appellant's medical conditions. The Office further stated that physical therapy was only prescribed by Dr. Waldman for a limited time with specific objective and attainable goals.

In a January 16, 1999 letter, appellant requested reconsideration of the December 4, 1998 decision. By decision dated February 16, 1999, the Office denied appellant's request for reconsideration, finding the evidence submitted for review to be of an immaterial nature and not sufficient to warrant review of the prior decision.

In a September 5, 1999 letter, appellant requested reconsideration of the Office's September 11, 1998 termination decision due to her refusal of a suitable light-duty job. By decision dated September 20, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was insufficient to require the Office to review its prior decision.

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.[1] As appellant filed her appeal with the Board on December 3, 1999, the only decisions properly before the Board are the December 4, 1998 decision not approving Martinelli Sports Therapy for appellant's physical therapy needs; the February 16, 1999 denial of appellant's reconsideration request regarding that decision; and the September 20, 1999 decision denying appellant's request for reconsideration of the Office's September 11, 1998 termination decision.

The Board finds that the Office did not abuse its discretion in denying appellant's claim for physical therapy at Martinelli Sports Therapy.

Section 8103(a) of the Federal Employees' Compensation Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician," which the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation." The Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[2]

The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions and appellant has the burden of

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *William F. Gay*, 38 ECAB 599, 603 (1987).

establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relation must include rationalized medical evidence.[3]

In this case, the record reveals that appellant had been receiving continuous physical therapy from Martinelli Sports Therapy, a facility located approximately 25 miles away from her home and work. The evidence of record reflects that appellant's then treating physician, Dr. Jacob E. Tauber, had authorized on July 1, 1998 a strengthening physical therapy program for appellant's left shoulder, left upper extremity and L-spine. In a letter dated July 9, 1998, the Office advised appellant's attorney that further physical therapy with Martinelli Sports Therapy was not authorized. Her attorney was informed of the medical information needed before any reimbursement for further therapy would be authorized. On July 23, 1998 the Office placed a telephone call to Martinelli Sports Therapy to confirm authorization for physical therapy and to determine how long physical therapy was needed. In a letter dated August 27, 1998, addressed to appellant's attorney, the Office advised that Dr. Tauber's request for physical therapy was approved, but physical therapy would not be authorized until he submitted his recommendations on the specific physical therapy modalities which were being prescribed. The letter noted that Dr. Tauber had spoken with an Office representative regarding what was needed to authorize such physical therapy on July 1, 1998. The letter further advised that his subsequent reports failed to provide the Office with the specifics to enable the authorization of such physical therapy. A September 9, 1998 report of telephone call reflects that an Office representative advised appellant that she needed to provide evidence of her need for physical therapy as there has been no explanation submitted as to the physical therapy that has been requested. In a report dated September 14, 1998, Dr. Tauber advised that he was unable to justify continued physical therapy and suggested appellant seek treatment elsewhere. On October 5, 1998 the Office accepted Dr. Waldman as appellant's treating physician and authorized the requested three weeks of continued physical therapy. Appellant apparently started treatment with Martinelli Sports Therapy, which was 17 miles from work.

In its December 4, 1998 decision, denying appellant's request for further physical therapy for her work-related conditions, the Office noted that appellant's place of residence was in Chino Hills, California and that she worked in Torrance, California. The Office further noted that physical therapy had only been prescribed for a limited time with specific objective and attainable goals. Such therapy was not meant to be palliative, infinite and without tangible results. The evidence leading up to the December 4, 1998 decision shows that both appellant and her treating physician, Dr. Tauber, knew physical therapy was not authorized on a continuing basis and specific medical information was required to justify any continuation of such treatment. The record reflects that he never provided the requested information to support the need of continued physical therapy. Absent such medical rationale from appellant's physician, the Office did not abuse its discretion in denying authorization of appellant's use of Martinelli Sports Therapy to provide further physical therapy. Dr. Waldman's request for three weeks of physical therapy was subsequently authorized by the Office. There is insufficient medical evidence of record to support continuing physical therapy. The Board finds that the Office properly denied authorization of continuing physical therapy at Martinelli Sports Therapy. Accordingly, such denial does not constitute an abuse of discretion.

[3] *Debra S. King*, 44 ECAB 203 (1992).

The Board further 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).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[4] the Office's regulations provide that a claimant must: (1) submit such application for reconsideration in writing; and (2) set forth arguments and contain evidence that either (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[5] When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[6] Evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.[8]

In her January 18, 1999 letter, appellant requested reconsideration of the Office's December 4, 1998 decision denying authorization of physical therapy at Martinelli Sports Therapy. The only issue involved is whether the Office abused its discretion in denying authorization for further physical therapy at Martinelli Sports Therapy. The Board notes that the statute only provides appellant a right to a physician of her choice, but does not extend a statutory right to her to select a physical therapy institution of her choice.[9] She related that she was able to get back to work because of her continued physical therapy and stated her reasons as to why she preferred Martinelli's facility over the other physical therapy facilities she attended since the Office approved her work-related injuries. As appellant does not have a statutory right to select a facility of her choice, her preference for Martinelli's facility over other facilities is not relevant to the issue at hand. Appellant further related that Richard Martinelli, the owner of the facility, informed her that he had a disagreement with an Office claims examiner regarding the billing of his services. In its February 16, 1999 decision, the Office advised that after it had approved Dr. Waldman's request for physical therapy on October 5, 1998, Martinelli's request for authorization was denied on the basis that the Office had previously advised the facility that further services would not be approved due to billing irregularities. This information pertaining to the facilities billing practices adds additional credence to the Office's use of its discretion in not approving Martinelli Sports Therapy as an authorized facility for treatment. Although appellant related that Martinelli's new location was closer to her work and that she does not go home to Chino Hills on the days she undergoes treatment, this information pertaining to distance has no relevance to the issue of the Office's exercise of discretion in denying further treatment at

[4] 5 U.S.C. §§ 8101-8193.

[5] 20 C.F.R. § 10.606 (b)(1),(2)

[6] *Elizabeth Pinero*, 46 ECAB 123 (1994)

[7] *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

[8] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[9] 5 U.S.C. § 8103(a).

Martinelli Sports Therapy. Appellant also discussed a variety of medical issues, which were related to her case. However, as the medical issues are unrelated to the denial of authorization to Martinelli Sports Therapy, this does not constitute a basis for reopening the case. Consequently, the evidence submitted on reconsideration is either not relevant to the issue on appeal or has no basis in fact which would constitute a basis for reopening a claim for further merit review. Therefore, the Office properly denied appellant's reconsideration request.

In her September 5, 1999 letter, appellant requested reconsideration of the Office's September 11, 1998 termination decision for refusing suitable work. Appellant reiterated her arguments for why she did not return to work following the initial suitability determination. She also contends that her September 12, 1998 letter accepting the position was timely as her 15-day acceptance period expired September 23, 1998. The record reflects that the Office considered appellant's letter dated August 25, 1999, in which appellant accepted the job offer but then gave reasons for refusing the position and found it constituted refusal of the position. In a letter dated August 27, 1998, the Office advised appellant that her refusal was not justified and granted her an additional 15 days from the date of the letter to accept the offered position without penalty. She did not accept the position in a timely manner.

In her letter requesting reconsideration, appellant advised the purpose of writing the August 25, 1998 letter was not to refuse the offer of employment but to obtain further information on what to do. She stated that her supervisor advised her to write another letter of acceptance, which she did on September 12, 1998. Appellant argued that as the Office's letter of August 25, 1998 was postmarked September 4, 1998 and she did not receive the letter until September 8, 1998; her September 12, 1998 letter accepting the position was timely as her 15-day acceptance period expired September 23, 1998. Inasmuch as the Office's August 27, 1998 letter clearly advised appellant that the 15-day period of acceptance ran from the date of the letter, appellant's arguments pertaining to the postmarked dates are not relevant. Appellant has not established that the Office abused its discretion in its September 20, 1999 decision by denying her request for reconsideration because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a relevant legal argument not previously considered by the Office and failed to submit relevant and pertinent new evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally be shown only through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. Appellant has made no such showing here.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 20 and February 16, 1999 and December 4, 1998 are hereby affirmed.

Dated, Washington, DC
February 8, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member