U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINA L. PATTON and DEPARTMENT OF DEFENSE, DEFENSE CONTRACT ADMINISTRATION SERVICES, Elsegundo, CA

Docket No. 01-1425; Submitted on the Record;
Issued July 24, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant had no disability beginning September 13, 1994 to September 23, 1999 and from January 5 to February 4, 2000 causally related to the accepted injury of September 4, 1987; and (2) whether the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

This is the second appeal in the present case. In a December 22, 1997 decision, the Board set aside the Office's decisions dated January 3, 1995 and October 12, 1994. The Board found that appellant's treating physician, Dr. Sobol did causally relate a disabling condition to the progression of appellant's September 4, 1987 employment injury[1] which was sufficient to require further development by the Office.[2] The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.[3]

On February 12, 1998 the Office referred appellant for a second opinion to Dr. Frederick Workmon, a Board-certified orthopedic surgeon. In a medical report dated March 3, 1998, he diagnosed appellant with anterior left knee pain associated with chondromalacia of the patellafemoral articulation and possible chondromalacia of the lateral femoral tibial compartment; status post thoracolumbar strain; and Achille's tendinitis resolved. He noted that appellant's total disability ceased at the time of the examination. Dr. Workmon indicated that appellant would have work restrictions of pushing and pulling of no more than 50 pounds and 35 pounds intermittently; lifting was limited to 50 pounds and less than 30 pounds repetitively; with

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[1] The Office accepted appellant's claim for internal derangement of the left knee and authorized arthroscopic surgery.

[2] The record reflects that appellant was terminated from federal employment on June 6, 1991 due to excessive absenteeism.

[3] Docket No. 96-173 (issued December 22, 1997).

intermittent squatting, kneeling and climbing. He noted that appellant's condition was permanent and stationary with no evidence of back or Achille's tendon problems. Dr. Workmon indicated that appellant did not sustain a consequential injury to her back and heel but exacerbated her injury to her knee with the second slip and fall. Appellant developed symptoms in the spine and Achille's tendon; however, he noted that appellant's total disability ceased at the time of this examination. In a supplemental report dated April 4, 1998, Dr. Workmon indicated that appellant was able to return to her employment duties as established by her treating physician. He noted that appellant was not treated again until August 10, 1994 when she complained of back pain, Achille's tendinitis and chondromalacia and was placed on temporary total disability for one month. On September 13, 1994 Dr. Sobol determined appellant's condition to be permanent and stationary with restrictions on squatting, heavy lifting and kneeling. He concluded that there was no reason appellant could not perform her modified job from June 1991 to April 1998 as secondary conditions resolved within a three-month period in 1994.

In a decision dated April 24, 1998, the Office denied appellant's claim for disability compensation for any period after June 6, 1991 excluding the period August 10 to September 13, 1994.

By letter dated April 22, 1999, appellant through her attorney requested reconsideration and submitted additional medical evidence from Dr. Sobol dated August 18, 1998 to March 19, 1999. Dr. Sobol's August 18, 1998 report indicated that appellant had not been treated since September 13, 1994 when her condition she was found to be permanent and stationary. He noted that appellant had not worked since June 6, 1991. Dr. Sobol noted that his findings were consistent with chondromalacia patellae. His report dated October 28, 1998 indicated that appellant's condition worsened and that she experienced giving-away of the knee and sustained a fall. Dr. Sobol noted positive results of a magnetic resonance imaging (MRI) scan performed in September 1998 and recommended arthroscopic surgery for the left knee. His March 19, 1999 report noted that the recent meniscal tear shown on the MRI scan was causally related to appellant's work-related injury of September 4, 1987. Dr. Sobol indicated that appellant's knee would not have given out in September 1998 had she never experienced the trauma of the September 4, 1987 injury.

In a decision dated July 22, 1999, the Office denied appellant's claim for wage-loss compensation after September 14, 1994 on the grounds that appellant's treating physician, Dr. Sobol, in a report dated September 13, 1994, noted that appellant's condition was permanent and stationary. The Office further noted that appellant's light-duty position was in compliance with Dr. Sobol's recommended employment restrictions.

On November 5, 1999 appellant filed a CA-7 form requesting wage-loss compensation for disability for an unspecified period of wage loss. Appellant submitted various medical records including an MRI scan dated August 18, 1999; an electromyograph (EMG) dated August 18, 1999; an operative note dated September 23, 1999 and an attending physicians report dated November 1, 1999. The MRI scan of the lumbar spine noted a central disc protrusion at L5-S1 level with facet joint hypertrophy. The EMG was essentially normal. The operative note dated September 23, 1999 indicated that appellant underwent arthroscopic surgery of the left knee; partial anterolateral and inner rim lateral meniscectomy, synovectomy, chondroplasty

patella with a diagnosis of anterior, superior and inner rim lateral meniscus tear, synovitis and chondromalacia Grade 3 and an unstable patella. The attending physician's report dated November 1, 1999, prepared by Dr. Sobol, diagnosed appellant with left knee arthroscopic, disc herniation and left ankle sprain. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by employment duties. Dr. Sobol further noted that appellant was totally disabled from August 14, 1998 to November 29, 1999 and partially disabled from September 14, 1994 to August 13, 1998. He remarked that on September 13, 1994 appellant's condition was permanent and stationary and noted that appellant was under permanent work restrictions precluding her from very heavy work, prolonged weight bearing and repetitive squatting, kneeling and climbing and was temporarily totally disabled from August 14, 1998 to November 29, 1999.

On November 30, 1999 the Office referred appellant for a second opinion to Dr. William Boeck, a Board-certified orthopedic surgeon. The Office provided Dr. Boeck with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated January 5, 2000, Dr. Boeck indicated that he reviewed the records provided and performed a physical examination of appellant. He noted physical findings of limitation of lumbar motion; pain to palpation at the lumbosacral interval and over the posterior iliac spine; normal straight leg raises; no radicular or neurological findings; tenderness of the left knee over both the medial and lateral aspects; a positive McMurray's test; no evidence of internal derangement; no effusion; no increased warmth or ligamentous laxity; no quadriceps or muscle weakness; and sensation was intact. Dr. Boeck diagnosed appellant with status post arthroscopic surgery; left knee with chondromalacia; posterior horn medial meniscus tear and a lumbar strain. He noted that the left knee diagnosis and surgery performed on September 23, 1999 were not the result of a new condition but were causally related to appellant's employment-related injury of September 4, 1987. In a work capacity evaluation form dated December 27, 1999, Dr. Boeck indicated that appellant was able to work 8 hours a day with restrictions of walking and standing for 2 hours; pushing, pulling and climbing stairs for 1 hour; lifting of 20 pounds occasionally and 10 pounds frequently; and no squatting or kneeling.

On March 2, 2000 appellant filed a CA-2 form, notice of recurrence of disability. She indicated a recurrence on September 13, 1994.

In a decision dated August 3, 2000, the Office denied appellant's claim for compensation after January 6, 2000. The Office accepted that appellant sustained a recurrence of the September 4, 1987 injury and was disabled from the date of surgery, September 23, 1999 to January 5, 2000.

Appellant requested reconsideration of the Office's decision dated August 3, 2000 and submitted additional medical evidence from Dr. Sobol, some of which was duplicative and new reports dated August 2, 1999 to April 18, 2000. Appellant alleged temporary total disability from September 13, 1994 to February 4, 2000. Dr. Sobol's treating physician's progress form reports dated August 2 to November 16, 1999 noted appellant's complaints of left knee pain and indicated that she was awaiting approval for surgery. He noted that on September 6, 1999 appellant fell and injured her knee, back and ankle. Dr. Sobol noted that appellant underwent

surgery on September 23, 1999 and would be out eight weeks. His note dated December 21, 1999 indicated that appellant's temporary total disability was extended until February 4, 2000. Dr. Sobol's summary report of April 18, 2000 indicated that appellant's condition was determined to be permanent and stationary on September 13, 1994. Appellant did not seek treatment again until August 14, 1998 after she experienced gradual symptomatic worsening of her left knee condition. She presented with symptoms of retro-patellar pain with popping, clicking and catching and subsequently experienced episodes of giving-way. Dr. Sobol noted that surgery was performed September 23, 1999 and appellant was placed in rehabilitative therapy. He noted that appellant was seen for follow-up on February 4, 2000 and was still experiencing left knee pain and episodes of giving-way. Dr. Sobol determined at that time that appellant's condition was permanent and stationary and had attained maximal benefit from the prescribed formal course of treatment and was discharged from the doctor's care. He noted left knee residuals which precluded appellant from heavy lifting, prolonged weight-bearing, running, jumping, repetitive torquing, kneeling, squatting or climbing. Dr. Sobol noted that appellant's back and left ankle conditions appeared because appellant developed an abnormal gait, as well as mechanical episodes of giving-way of the left knee as a result of the accepted left knee injury. He then concluded appellant's current left knee, ankle and back condition were causally related to the work-related injury of September 4, 1987.

In a decision dated October 12, 2000, the Office denied appellant's request for review on the grounds that the evidence was cumulative and not sufficient to warrant review of its prior decision.

The Board finds that appellant has failed to establish that her condition during the claimed periods of disability is causally related to the accepted employment injury of September 14, 1987.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who. On the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

[4] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

[5] Section 10.104(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104(b) (1999).

[6] *See Robert H. St. Onge supra* note 4.

The medical evidence must demonstrate that the claimed recurrence was caused precipitated, accelerated or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The Office accepted appellant's claim for internal derangement of the left knee and paid appropriate compensation. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning September 14, 1994 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Appellant's treating physician, Dr. Sobol, submitted various reports but did not specifically address whether appellant's September 4, 1987 injury caused or aggravated her disability during the claimed period at issue, beginning September 1994 to February 4, 2000. His treatment notes from August 18, 1998 indicated that appellant had not been treated since September 13, 1994 when her condition was found to be permanent and stationary. Dr. Sobol noted that his physical findings were consistent with chondromalacia patellae. His October 28, 1998 report indicated that appellant's condition worsened and she experienced giving-away of the knee and fell. In September 1998, Dr. Sobol recommended arthroscopic surgery for the left knee. His March 19, 1999 report noted that the recent meniscal tear shown on the MRI scan performed in September 1998 was causally related to appellant's work-related injury of September 4, 1987. Dr. Sobol indicated that appellant's knee would not have given out in September 1998 had she never experienced the trauma of the September 4, 1987 injury. Even though he noted that appellant was still experiencing symptoms of her left knee condition after he determined that she was permanent and stationary on September 12, 1994, Dr. Sobol did not, in this report or in others, specifically address whether appellant had employment-related disability beginning September 13, 1994 to February 4, 2000, he merely indicated that appellant had not worked since June 6, 1991 without any indication of any specific dates on which the accepted employment injury caused disability.

The only other evidence supporting disability during this period was an attending physician's report dated November 1, 1999, prepared by Dr. Sobol, which diagnosed appellant with left knee arthroscopies, disc herniation and left ankle sprain. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by employment duties. Dr. Sobol further noted that appellant was totally disabled from August 14, 1998 to November 29, 1999 and partially disabled from September 14, 1994 to August 13, 1998. He remarked that on September 13, 1994 appellant's condition was permanent and stationary and noted that appellant

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[8] For the importance of bridging information in establishing a claim for a recurrence of disability, *See Robert H. St. Onge, supra* note 4; *Shirloyn J. Holmes*, 39 ECAB 938 (1998); *Richard McBride*, 37 ECAB 738 (1986).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

was under permanent work restrictions precluding her from very heavy work, prolonged weight bearing and repetitive squatting, kneeling and climbing and was temporary totally disabled from August 14, 1998 to November 29, 1999. While Dr. Sobol somewhat supported causal relationship in this particular report he provided no medical reasoning or rationale to support such opinion. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[10]

In a medical report dated January 5, 2000, Dr. Boeck, the Office referral physician, diagnosed appellant with status post arthroscopic surgery; left knee with chondromalacia; posterior horn medial meniscus tear; and lumbar strain. He noted that appellant's left knee diagnosis and surgery performed September 23, 1999 were not the result of a new condition but were causally related to appellant's employment-related injury of September 4, 1987. In a work capacity evaluation form dated December 27, 1999, Dr. Boeck indicated that appellant was able to work 8 hours a day with restrictions of walking and standing for 2 hours; pushing, pulling and climbing stairs for 1 hour; lifting of 20 pounds occasionally and 10 pounds frequently; and no squatting and kneeling. The Board notes that Dr. Boeck had specific knowledge of appellant's employment factors and provided medical rationale for his opinion that appellant's period of disability ceased January 5, 2000. The Board finds that Dr. Boeck's report represents the weight of the evidence.

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of September 4, 1987. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant's employment injury.

The Board further finds that the Office in its October 12, 2000 decision properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under § 8128.[11]

Under section 8128(a) of the Federal Employees' Compensation Act,[12] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[13] which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

[10] *See Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[11] *See* 20 C.F.R. § 10.606(b)(2)(i-iii).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b) (1999).

(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]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[14]

In the present case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was cumulative and insufficient. In support of her request for reconsideration appellant submitted various medical records from Dr. Sobol. This evidence was duplicative of evidence already contained in the record[15] and was previously considered by the Office. Other reports from Dr. Sobol merely restated his medical opinion as set forth in his reports previously considered by the Office or either were not relevant because they did not specifically support causal relationship for the claimed period.[16] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office."[17] Therefore, appellant did not submit relevant evidence not previously considered by the Office.

[14] 20 C.F.R. § 10.608(b).

[15] 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[16] *Id.*

[17] 20 C.F.R. § 10.606(b).

The decisions of the Office of Workers' Compensation Programs dated October 12 and August 3, 2000 are hereby affirmed.

Dated, Washington, DC
July 24, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member