

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA L. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Lafayette, LA

*Docket No. 01-2286; Submitted on the Record;
Issued May 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 20, 2001 request for reconsideration.

On September 3, 1998 appellant, then a 29-year-old casual clerk, filed a claim asserting that she pulled something in her back while lifting mail from a pallet on August 19, 1998. The Office accepted her claim for the condition of lumbar sprain. Appellant accepted a temporary limited-duty job offer on September 3, 1998 but did not report to work.

Dr. Michael J. Duval, a Board-certified orthopedic surgeon, completed a work status treatment report on October 1, 1998. It appears that he initially restricted appellant to "sedentary work only," but he marked through this restriction and indicated that appellant was "unable to work" until evaluated by Dr. Leoni or Hurst.

Appellant filed a claim for wage-loss benefits beginning August 21, 1998. The Office advised that the medical evidence of record did not support that she was totally disabled for work during the period claimed and that a medical report supporting disability was required from her physician.

Appellant submitted a March 2, 1999 report from Dr. Duval, who related appellant's history of injury and noted that she was placed on sedentary duty. He also noted that appellant's magnetic resonance imaging (MRI) scan was positive for a small disc protrusion at L4-5 and that she was experiencing leg symptoms on the side that the protrusion was present. As she had no prior history of lumbar injury or treatment, Dr. Duval concluded that appellant's current symptomatology was related to the August 19, 1998 employment injury. He added: "Based on how she has looked throughout her treatment I would not think she is capable of returning to normal duty as of the last time I saw her."

In a decision dated April 7, 1999, the Office denied appellant's claim for wage-loss benefits. The Office found that although Dr. Duval reported that appellant could not return to

normal duty, he had nonetheless restricted her to sedentary work. His report, therefore, failed to establish that the employment injury prevented appellant from working the limited-duty job she accepted on September 3, 1998.

In a May 11, 1999 treatment note, Dr. Duval stated that appellant was “not fit for duty at this time.”

In a decision dated January 6, 2000, an Office hearing representative affirmed the denial of wage-loss benefits. The hearing representative found that there was no medical indication that appellant was unable to perform the sedentary work recommended by Dr. Duval in his initial reports. Although he recommended additional tests and examination by other specialists, he did not change his opinion regarding appellant’s ability to work. The hearing representative also found that appellant was entitled to continuation of pay through September 2, 1998.

On February 28, 2000 appellant requested reconsideration and submitted reports from Dr. Michael E. Heard, a Board-certified orthopedic surgeon who recommended a functional capacities evaluation and approved appellant for light and sedentary activities as tolerated.

In a decision dated July 10, 2000, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office noted that all of the medical evidence supported that appellant was capable of performing sedentary work and was not totally disabled.

On June 20, 2001 appellant again requested reconsideration. She argued that Dr. Duval placed her on a nonwork status on October 1, 1998 and again on May 11, 1999. Appellant also argued that the employer’s failure to timely authorize medical treatment had interfered with her ability to develop her case. Because the employer failed to provide authorization for a functional capacities evaluation scheduled for January 12, 2000, Dr. Heard was not able to see appellant again or give a final opinion on her work duty status.

In a decision dated August 29, 2001, the Office denied appellant’s request for reconsideration. The Office found that appellant’s argument regarding the employer’s failure to authorize medical treatment was immaterial and insufficient to warrant a review of the prior decision.

The Board finds that the Office properly denied appellant’s June 20, 2001 request for reconsideration.

The Federal Employees’ Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”¹

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application

¹ 20 C.F.R. § 10.605 (1999).

for reconsideration, including all supporting documents, must be in writing and must 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.²

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

Appellant's June 20, 2001 request for application meets none of the standards for obtaining a merit review of her claim. She offered two basic arguments, but these arguments do not satisfy the second standard described above. First, she argued that Dr. Duval placed her on a nonwork status on October 1, 1998 and again on May 11, 1999. In doing so, however, appellant is merely rearguing facts already of record. The Office has previously considered Dr. Duval's opinion that appellant was unable to perform her regular duties. The underlying issue in this case, which Dr. Duval did not specifically address, is whether appellant was also totally disabled for the temporary limited-duty job offer she accepted on September 3, 1998.⁴ That he placed her in a general nonwork status on October 1, 1998 or May 11, 1999, without reference to the limited-duty job, fails to advance a relevant legal argument not previously considered by the Office.

Appellant also argued that her employer's failure to timely authorize medical treatment had interfered with her ability to develop her case. Without authorization for a functional capacities evaluation scheduled for January 12, 2000, she argued, Dr. Heard was not able to see appellant again or give a final opinion on her work-duty status. The Office correctly found that this was immaterial. Appellant's functional capacity on January 12, 2000 would not address whether she was totally disabled for all work after August 21, 1998, as she claimed, including the temporary limited-duty job offer she accepted on September 3, 1998. Appellant's argument fails to satisfy the second standard described above.

Because appellant's June 20, 2001 request for application meets none of the standards for obtaining a merit review of her claim, the Board will affirm the Office's August 29, 2001 decision denying that request.

² *Id.* at § 10.606.

³ *Id.* at § 10.608.

⁴ On March 2, 1999 Dr. Duval confirmed that he had placed appellant on sedentary duty.

The August 29, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member