

FACTUAL HISTORY

On December 12, 1993 appellant, then a 45-year-old legal document review clerk, filed a traumatic injury claim alleging that on December 8, 1993 she injured her low back while pulling a cart loaded with case records from the elevator. The Office accepted that appellant sustained a lumbosacral strain and paid appropriate compensation benefits. Appellant continued medical treatment for her back pain and eventually returned to work in a light-duty capacity on March 20, 1995 with restrictions on lifting and bending. She resigned from the employing establishment effective February 24, 2001 as she could “no longer perform the required duties on the work room floor.”

On September 17, 2001 appellant filed a notice of recurrence of disability beginning February 24, 2001 and contended that her December 8, 1993 back injury resulted in a permanent lumbosacral myoligamentous sprain/strain. Notes from the employing establishment indicated that appellant was seen at a nurses’s station for back pain from November 30, 2000 to February 14, 2001. Emergency room visits to Mary Washington Hospital dated March 12 and 29, 2001 provided an impression of acute exacerbation of chronic back pain. In an April 6, 2001 report, Dr. Raymond B. Greaser, a Board-certified anesthesiologist specializing in pain management, advised that, after an extensive clinical history and physical examination, appellant had chronic multi-focal body pain with a primary complaint of chronic bilateral lumbosacral back pain with radiation to the bilateral lower extremities consistent with probable degenerative lumbar spine disease. An April 26, 2001 magnetic resonance imaging (MRI) scan noted some disc desiccation at L1-2, L4-5 and L5-S1 with some bulging annuli at L4-5 and L5-S1, but no herniated nucleus pulpous or spinal stenosis.

In a May 21, 2001 attending physicians report, Dr. Kurt R. Larson, a Board-certified orthopedic surgeon, advised that appellant had chronic low back pain and, with a check mark, opined that it was causally related to her December 8, 1993 back injury. He noted conservative treatment was being provided and appellant was advised in 1995 that she was capable of doing light-duty work 4 days a week, for 10 hours each day.

In an October 22, 2001 letter, the Office advised appellant of the evidence necessary to support her claim. She was afforded 30 days within which to provide additional evidence. No new evidence was submitted.

By decision dated December 27, 2001, the Office denied appellant’s recurrence of disability claim on the grounds that she did not submit sufficient medical evidence to establish that her disability on or after February 24, 2001, which was causally related to the accepted employment injury of December 8, 1993.

In a letter dated February 27, 2002, appellant requested an oral hearing which was held on January 29, 2003. She testified that she was never free of back pain since the accepted work injury and had received intermittent medical care. Appellant stated that she resigned because of her back pain. Current treatment records were submitted.

In a May 3, 2002 report, Dr. Joseph B. White, a Board-certified orthopedic surgeon specializing in orthopedic surgery of the spine, noted that appellant had injured her back at work

in 1993 and that she had progressively increasing pain over the prior seven years, to the point that she could no longer work. After noting examination and x-ray findings, Dr. White diagnosed facet joint arthritis of L4-5 with anterior listhesis. Dr. White also completed a July 25, 2002 residual functional capacity questionnaire, but did not indicate whether appellant was disabled from work. In a January 23, 2003 report, he noted that x-rays of the cervical spine showed cervical spondylosis at C5-6 and C6-7, which was not severe.

In an August 7, 2002 medical report, Dr. Larson reviewed office notes and a three phase bone scan and indicated that lower lumbar facet arthrosis could be a cause of appellant's back symptoms. He stated that he did not know whether this had any direct relationship to the accepted work injury. Progress notes dated April 12 and 18, 2002 were provided along with an April 15, 2002 three phase bone x-ray, along with the previously submitted April 26, 2001 MRI scan. Treatment notes from the Medical Center of Stafford dated October 4 and 24, November 4, 2001 and February 25, 2002 were provided along with copies of emergency room visits to the Mary Washington Hospital dated February 24 and 26, 2002, which diagnosed chronic back pain.

By decision dated April 24, 2003, an Office hearing representative affirmed the December 27, 2001 decision, finding that the medical evidence did not support disability commencing February 24, 2001 as a result of the 1993 back strain.

In a June 3, 2003 letter, appellant requested reconsideration and advised that she should not have completed a claim of recurrence of injury as she had only applied for leave buy back, which had been approved.

In a June 30, 2003 nonmerit decision, the Office denied appellant's reconsideration request on the grounds that she failed to provide a new or pertinent legal argument to support merit review.

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

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and

² *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³

ANALYSIS – ISSUE 1

The record reflects that appellant's employment condition was accepted for a lumbosacral strain and she returned to work with permanent light duty, with restrictions as a legal document review clerk. She claimed that she sustained a recurrence of disability on February 24, 2001 the date she resigned from the employing establishment.

Appellant submitted medical evidence documenting chronic back pain which eventually progressed to a lumbar facet joint arthritis and lumbar spondylosis at L4-5. In an April 6, 2001 report, Dr. Greaser opined that appellant's chronic bilateral lumbosacral back pain and resulting symptoms were consistent with probable degenerative lumbar spine disease. His opinion is of diminished probative value, however, because he did not relate appellant's symptoms to the accepted lumbosacral strain, nor indicate that she was disabled from performing her light-duty position, as of February 24, 2001.

Dr. Larson checked "yes" to a form report question, indicating that appellant's chronic low back pain was related to her December 8, 1993 back injury. The Board has long held that when a physician's opinion on causal relationship consists of checking "yes" to a form question, the opinion is of diminished probative value as there is no medical explanation for the conclusion on causal relationship.⁴ Dr. Larson did not opine that appellant could not work, but reiterated that she could continue to work under the restrictions he had set forth in 1995. Although he opined in an August 7, 2002 report that appellant's lumbar facet arthrosis could be the cause of her back pain, he noted that he did not know whether there was any direct relationship between the lumbar facet arthrosis and her work injury. This renders his opinion on causal relationship as speculative.

Dr. White diagnosed L4-5 facet joint arthritis, lumbar spondylosis at L4-5 and a cervical spondylosis. He completed a functional capacity questionnaire, but did not indicate that appellant was totally disabled from work as of February 24, 2001 or explain how her disability as of that date related to the accepted injury.

Appellant alleged that her chronic back pain and current conditions were related to her accepted employment injury. However, the record reflects that she has submitted insufficient rationalized medical evidence to establish that her back condition was caused by the accepted December 8, 1993 employment injury. None of the medical reports of record establish that appellant's present condition was caused by her accepted injury or explain how she was disabled due to the lumbar strain after seven years. She has failed to demonstrate a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. Appellant has, therefore, failed to establish that she sustained a recurrence of disability causally related to the December 3, 1993 employment injury.

³ *Ricky S. Storms*, 52 ECAB 349 (2001); *Ronald C. Hand*, 49 ECAB 113 (1997).

⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994).

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that, a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁷

ANALYSIS -- ISSUE 2

The Office, in its decision dated June 30, 2003, denied appellant's claim without conducting a merit review, on the grounds that her June 3, 2003 letter failed to provide a new or relevant legal argument. In her request for reconsideration, appellant asserted that she should not have completed a claim of recurrence of injury as she had only applied for a leave buy back. These arguments, however, are not relevant to the issue on appeal.⁸ The recurrence of disability claim was denied based on the determination that the medical evidence submitted by appellant did not establish a causal relationship between her disability commencing on February 24, 2001 and the December 8, 1993 injury. Appellant's opinion as to the medical evidence is not relevant to the issue of causal relationship. Her request for reconsideration neither alleged nor demonstrated how the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board notes that appellant did not submit any evidence with her request for reconsideration. Accordingly, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).

⁷ *Annette Louise*, 54 ECAB ___ (Docket No. 03-335, issued August 26, 2003).

⁸ See *Marion Johnson*, 40 ECAB 735 (1989).

CONCLUSIONS

The Board finds that appellant has failed to establish that she sustained a recurrence of disability causally related to the December 3, 1993 employment injury. Additionally, the Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 30 and April 24, 2003 are affirmed.

Issued: May 21, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member