

**United States Department of Labor
Employees' Compensation Appeals Board**

LUCITA L. DAWKINS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Miami, FL, Employer**

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**Docket No. 04-1816
Issued: November 5, 2004**

Appearances:
Lucita L. Dawkins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 13, 2004 appellant filed an appeal of a February 14, 2004 nonmerit decision of the Office of Workers' Compensation Programs that found the additional evidence she submitted was not sufficient to warrant review of its March 24, 2004 merit decision finding that her diagnosed condition was not caused or aggravated by the identified factors of her employment. As appellant's appeal was not filed within one year of the Office's most recent merit decision on March 24, 2003, the Board, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, does not have jurisdiction to review the merits of appellant's case.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On October 22, 2002 appellant filed a claim for compensation for a recurrence of disability beginning July 17, 2002 related to her March 1, 1991 employment injury.¹ Appellant stated:

“Since I returned to work I have been experiencing increased swelling, stiffness, increased pain and increased fatigue. I have constant pain throughout my joints, especially in both knees, lower back, shoulder and neck. I am also having migraines. I have been experiencing numbness in my right arm, hand and fingers. My medical treatment consists of several injections in my shoulder and back, and an increase in my medication dosage, and bed rest.”

As to the cause of her recurrence of disability, appellant stated:

“My recurrence of disability is due to my sitting at work for a prolonged period of time. The sitting at work has increased the pressure on my lower back. At work I am unable to lay down and relax my muscles and joints as needed. My present condition is related to my original injury (Left knee strain with an aggravation to a Systemic Lupus Erythematosus (SLE), Rheumatoid Arthritis (RA), Sjogren Syndrome because my weight is not equally distributed, and the right side of my body bears most of my body’s weight causing pain throughout my joints and muscle spasms. Therefore, I use my arms and right leg to push up from a s[ea]ted position, which has caused the development of excruciating pain and swelling in my right shoulder, neck, back, both knees, both wrists, fingers, and ankles. Because of my increased activity at work, I have been experiencing more pain and swelling throughout my body.”

By letters dated November 26, 2002, the Office advised appellant that she had not experienced a recurrence, which was defined as a spontaneous worsening of a work-related condition, and that, since she attributed the aggravation of her condition to her work duties, a new injury case was being created. The Office allotted 30 days for appellant to submit a specific description of the work activities that contributed to her condition, and a medical report including an explanation of how work factors contributed to her condition.

By decision dated December 31, 2002, the Office found that the evidence did not establish that the claimed events occurred as alleged, and that there was no medical evidence providing a diagnosis that could be connected to the claimed events.

By letter dated January 7, 2003, appellant requested reconsideration, and described the work activities that contributed to her condition, citing the prolonged sitting, use of a computer, preparing and mailing documents, and not getting enough rest due to work-related fatigue and stress. Appellant submitted a December 30, 2002 report from Dr. Richard L. Chang, a Board-

¹ The Office accepted that appellant’s March 1, 1991 employment injury resulted in a left knee strain and aggravation of her underlying systemic lupus erythematosus, and paid compensation for temporary total disability from March 7, 1992 to April 29, 2002, when she returned to limited duty four hours per day.

certified rheumatologist who had treated her since April 1994. Dr. Chang listed appellant's numerous symptoms, described her findings on physical examination and laboratory tests, and stated that her treatment consisted of increased medications and bed rest to decrease her fatigue and stress, and steroid injections in her shoulder, low back and wrists, which provided temporary relief of pain. Dr. Chang diagnosed "work-related fatigue and stress that is causing an aggravation to Systemic Collagen Vascular Diseases: Systemic Lupus Erythematosus (SLE), Rheumatoid Arthritis (RA), Sjogrens Syndrome which is exacerbating and/or producing right shoulder rotator cuff disease, myofascial lower back pain, neck pain, joint pain and swelling involving both knees, wrists, and ankles." Dr. Chang stated:

"Since her work-related accident in March 1991, [appellant] has had persistent and significant left knee swelling and pain. After returning to work in April 2002, she has been experiencing increased symptoms. [Appellant] has increased neck pain, increased right shoulder pain and lower back pain. She has increased pain *i.e.* muscle spasms and swelling from sitting at work. She has swelling of her knees, wrists, fingers, ankles and feet as well as numbness of her right hand, fingers, and feet. Since [appellant] has returned to work, her blood tests have revealed an increase in her sedimentation rate, and an increase in her rheumatoid factor, and a decrease in her white count. Her serologies are very consistent with the increase of the activity of her systemic collagen vascular diseases. From her physical examinations and laboratory tests, I have concluded that [appellant's] work-related illnesses are directly related to and have become more active since she has returned to work her function is significantly impaired.

"[Appellant's] lower back pain, right shoulder pain, and neck pain are directly related to her left knee injury. Because of her left knee injury, her gait is antalgic and this causes back pain. Since [appellant] injured her left knee, she must use her arms and place most of her weight on her right leg to arise from a seated position. This has caused a probable rotator cuff tendon partial tear in the right shoulder, which has irritated the surrounding muscles in her neck and clavicle causing pain and stiffness. She has associated headaches.

"Based upon my medical expertise, [appellant's] [f]ederal employment contributed to her Systemic Collagen Vascular Diseases (SLE, RA, Sjogrens Syndrome) because she is physically unable to work four hours per day five days a week consecutively. [Appellant's] work schedule is the contributing factor to the exacerbation of her Collagen Vascular Diseases. The schedule does not afford [appellant] enough rest; therefore precipitating her fatigue and stress. In addition, [appellant] is sitting for 4 hours per day, which is exerting stress and pressure on her back and tension in her neck and shoulders. Sitting for this period is also causing swelling and pain in her ankles. [Appellant] also uses the computer on a regular basis, which is causing swelling, stiffness, and pain in her fingers and wrists. Any patient suffering from Systemic Lupus Erythematosus, Rheumatoid Arthritis, and Sjogrens Syndrome are warned to avoid fatigue and stress because it can accelerate the progression of the diseases."

By decision dated March 24, 2003, the Office found that the evidence was insufficient to establish that appellant's diagnosed condition was caused or aggravated by the identified factors of her employment. The Office noted that Dr. Chang had consistently maintained appellant was totally disabled for work, and that she returned to work only after she was referred to a second opinion specialist and a referee specialist. The Office found Dr. Chang's report insufficient to meet appellant's burden of proof because it based disability on subjective complaints of pain and fatigue, it was speculative and based on an inaccurate history of sitting for four hours per day, and it was not supported by medical rationale.

By letter dated March 8, 2004, appellant requested reconsideration, contending that she attempted to return to work but it soon became apparent the position was too much of a strain physically, and began to take a toll on her health. Appellant submitted a February 10, 2004 report from Dr. Chang that listed appellant's numerous symptoms, described her findings on physical examination, laboratory tests,² and magnetic resonance imaging (MRI) scans of her right shoulder and cervical spine. Dr. Chang stated that her treatment consisted of increased medications and bed rest to decrease her fatigue and stress, and steroid injections in her shoulder, low back and wrists, which provided temporary relief of pain; he diagnosed "work-related fatigue and stress that is causing an aggravation to Systemic Collagen Vascular Diseases: Systemic Lupus Erythematosus (SLE), Rheumatoid Arthritis (RA), Sjogrens Syndrome which is exacerbating and/or producing right shoulder rotator cuff disease, myofascial lower back pain, neck pain (multi-level disc disease), joint pain and swelling involving knees, wrists, and ankles." Dr. Chang stated:

"Since her work-related accident in March 1991, [appellant] has had persistent and significant left knee swelling and pain. She was feeling somewhat improved but, after returning to work in April 2002, she has been experiencing increased symptoms. [Appellant] has increased neck pain, increased right shoulder pain and lower back pain, and because of her work, she has developed mild multilevel disc disease. She has increased pain *i.e.*, muscle spasms and swelling from sitting at work. She has swelling of her knees, wrists, fingers, ankles and feet as well as numbness of her right hand, fingers, and feet. Since [appellant] has returned to work, her blood tests have revealed an increase in her sedimentation rate, and an increase in her rheumatoid factor, and a decrease in her white count. Her serologies are very consistent with the increase of the activity of her systemic collagen vascular diseases. From her physical examinations, laboratory tests, and MRI results I have concluded that [appellant's] work-related illnesses are directly related to and have become more active since she has returned to work. Her function is significantly impaired.

"[Appellant's] lower back pain, right shoulder pain, and neck pain are directly related to her left knee injury. Prior to becoming my patient, for years [appellant] used crutches and a cane to walk with because of her left knee injury, which she sustained at work. The extended use of the crutches and cane caused the

² These symptoms, findings on physical examination, and results of laboratory tests were identical to those in Dr. Chang's December 30, 2002 report.

development of her rotator cuff disease *i.e.*, right shoulder pain. Because of her left knee injury, her gait is antalgic and this causes back pain. Since [appellant] injured her left knee, she must use her arms and place most of her weight on her right leg to arise from a seated position. Using her arms to arise from a seated position irritates her right shoulder pain. This has caused a tearing of the posterior glenoid labrum in the right shoulder, which has irritated the surrounding muscles in her neck and clavicle causing pain and stiffness. She has associated headaches.

“Based upon my medical expertise, [appellant’s] [f]ederal employment contributed to her Systemic Collagen Vascular Diseases (SLE, RA, Sjogrens Syndrome) because she is physically unable to work three to four hours per day five days a week consecutively. [Appellant’s] work schedule is the contributing factor to the exacerbation of her Collagen Vascular Diseases. The schedule does not afford [appellant] enough rest; therefore precipitating her fatigue and stress. In addition, [appellant] is sitting for up to four hours per day, which is exerting stress and pressure on her back and tension in her neck and shoulders which is aggravating her disc disease. Sitting for this period is also causing swelling and pain in her ankles. [Appellant] also uses the computer on a regular basis, which is causing swelling, stiffness, and pain in her fingers and wrists. And any patient suffering from Systemic Lupus Erythematosus, Rheumatoid Arthritis, and Sjogrens Syndrome are warned to avoid fatigue and stress because it can accelerate the progression of the disease. [Appellant] is unable to continue working in her current position.”

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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. 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.³ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

ANALYSIS

Appellant's March 8, 2004 request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Instead, her request for reconsideration relied on a February 10, 2004 report from Dr. Chang. As can be seen above, Dr. Chang's report was, for the most part, identical to his December 30, 2002 report that was considered by the Office in rendering its March 24, 2003 decision on the merits of appellant's case. Insofar as it was repetitious of the earlier report, Dr. Chang's February 10, 2004 report is insufficient to require the Office to reopen the case for further review of the merits of the claim.

There were two substantial differences in the later report: inclusion of results of MRI scans of the right shoulder and cervical spine, and a new assertion that appellant's use of crutches and a cane due to her left knee injury caused the development of rotator cuff disease. The results of the MRI scans are not relevant because they do not show how right shoulder or neck conditions, which Dr. Chang attributed to appellant's left knee injury in his earlier reports, are so related. The assertion that use of crutches and a cane caused rotator cuff disease has no relevance to the claim filed by appellant and adjudicated by the Office, which was that the duties of her limited position from April 27 to July 16, 2002 worsened her medical conditions.

CONCLUSION

The Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128.

³ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member