United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 08-2067**
	)	**Issued: June 9, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal from the merit decision dated August 1, 2007 denying her claim for recurrence. Her appeal is also timely filed from the November 30, 2007 decision denying reconsideration of the merits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits and the nonmerit decision.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability causally related to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs, pursuant to 5 U.S.C. § 8128(a), properly declined to reopen her case for further review of the merits of her claim.

FACTUAL HISTORY

The record reveals that on August 16, 1993 appellant, a 31-year-old continuous flat sorter, filed an occupational disease claim alleging that she sustained a medical condition as a

result of typing in the performance of duty commencing July 1, 1993.[1] The Office accepted this claim for bilateral tenosynovitis of hand and wrist. In a notice of recurrence dated October 2, 2006, but not received until June 26, 2007, appellant alleged a recurrence of disability commencing March 1996. She indicated that she worked at a series of jobs from October 1, 1995 through February 13, 1998. Appellant claimed lost wages from February 14, 1998 to present. She noted that she stopped work after the recurrence on February 13, 1998 and indicated that she could not keep up with her work as her hand/finger coordination was slow. The employing establishment controverted appellant's claim, noting that she resigned from her federal employment on May 9, 1994 and, accordingly, had not been employed by the employing establishment for 13 years at the time she filed her claim for recurrence. Appellant filed a second notice of recurrence on July 9, 2007.

In a report dated April 12, 2006, a nurse practitioner noted that appellant had upper back pain, which radiated into the shoulder and neck. She opined that this was most likely related to stress patterns and moderate to severe scoliosis. The nurse recommended a chiropractor and massage therapy.

In a report dated June 19, 2006, Dr. Edward M. Bednarz, a chiropractor, noted that appellant stated that her symptoms began after working as a postal delivery person but Dr. Bednarz commented that the specifics of the onset of her pain was unclear. He conducted a physical examination and reviewed her x-rays from May 12, 2003 and magnetic resonance imaging (MRI) scan from August 21, 2003 and assessed her with "cervical and cervicothoracic dysfunction complicated by C5-6 stenosis and C6-7 disc herniation/extrusion." Dr. Bednarz also assessed "Thoracic dysfunction complicated by thoracic scoliosis." He noted that it was difficult to come to a clear understanding of appellant's problems because she had trouble focusing on the present moment.

By decision dated August 1, 2007, the Office denied appellant's claim for a recurrence. By letter dated September 28, 2007, appellant requested reconsideration. In this letter she alleged that her condition has continued with the same symptoms after leaving the employing establishment and that she resigned because all the available positions required the same labor with her hands. Appellant again noted that she could not keep up with her jobs because of slow finger coordination and that it was hard sitting in a chair. She specifically requested that her case be reconsidered because she was led to believe that this condition was preexisting from her military service but that the military found that it was not service related. Appellant also noted that she did not have legal representation and could not find or pay for doctors.

In support of her request for reconsideration, appellant submitted an April 19, 1994 report by Dr. Charles A. Peterson, a Board-certified orthopedic surgeon, indicating that, although he had no objection to appellant being sent back to her regular job, he believed that, if appellant went back to her regular job, her condition would be aggravated and recommended that some other kind of work be found. Appellant also submitted a May 6, 1994 report by Dr. Eric Strandberg, a Board-certified family practitioner, indicating that he spoke with Dr. Peterson, who agreed that appellant's bilateral arm tendinitis has subsided and that she can be released to

[1] As the Office had retired appellant's file to the Federal Records Center on August 20, 1998, the actual claim form is not contained in the current record.

regular duty, but he seemed certain that her symptoms may recur if she resumed her prior duties. Finally, appellant submitted progress notes from CHEC Medical Center indicating that she was treated by various physicians in 1993. In a September 12, 1993 note, Dr. Peterson noted improving tendinitis and cervical/shoulder strain. An October 5, 1993 note indicated that appellant had improving tendinitis. She was also seen on December 7, 1993 with regard to a July 25 1993 injury. Dr. Peterson noted that appellant was treated for cervical/shoulder strain and should continue labeling work eight hours a day and should type a maximum of three hours a day. In a December 14, 1993 report, he indicated that appellant had improving hand/wrist tendinitis and lumbar strain not related to the industrial injury. On April 19, 1994 Dr. Peterson indicated that appellant had tendinitis in both arms and should not go back to regular-duty job but should start modified duty. On December 7, 1997 he indicated that appellant could lift 10 pounds and stand for four hours and type three hours a day maximum. Dr. Peterson noted appellant's diagnosis as cervical shoulder strain and wrist tendinitis.

By decision dated November 30, 2007, the Office denied appellant's request for reconsideration of the merits of the case.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[2]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.[3] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[4]

ANALYSIS -- ISSUE 1

The Board finds that appellant has submitted no evidence linking her condition in March 1996 to her prior accepted injury. Initially, the Board notes that nurse practitioners are not physicians under the Act and accordingly, any note signed by a nurse practitioner does not constitute medical evidence and has no weight or probative value.[5] Furthermore, the Board does not consider the report of Dr. Bednarz to constitute probative medical evidence, as a chiropractor

[2] 20 C.F.R. § 10.5(x).

[3] *Carmen Gould*, 50 ECAB 504 (1999).

[4] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[5] *See Jan A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term physician. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

is only considered a physician for purposes of the Act where he diagnoses subluxation by x-ray.[6] As Dr. Bednarz did not diagnose a subluxation by use of an x-ray, he is not a physician under the Act and his report does not constitute competent medical evidence. Accordingly, the Board finds that appellant has not met her burden of proof to establish a recurrence of her accepted work injury.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act[7] provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[8] 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.[9]

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 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.[10]

An application for reconsideration must be sent within one year of the date of the Office decision, for which review is sought.[11] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence 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.[12]

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[6] Section 8101(2) of the Act provides that the term physician include chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See Thomas W. Stevens*, 50 ECAB 288 (19999); *George E. Williams*, 44 ECAB 530 (1993).

[7] 5 U.S.C. § 8101 *et seq.*

[8] 5 U.S.C. § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

[9] 20 C.F.R. § 10.605.

[10] *Id*. at § 10.606. *See Susan A. Filkins*, 57 ECAB 630 (2006).

[11] *Id.* at § 10.607(a). *See Joseph R. Santos*, 57 ECAB 554 (2006).

[12] *Id.* at § 10.608(b). *See Candace A. Karkoff*, 56 ECAB 622 (2005).

ANALYSIS -- ISSUE 2

In connection with her request for reconsideration, appellant submitted numerous 1994 medical reports from Drs. Peterson and Strandberg, which had already been considered by the Office. The Board has held that submission of evidence that repeats or duplicates that already of record does not constitute a basis for reopening a claim for merit review.[13] The Board also notes that the reports from CHEC Medical Center are not signed by an identifiable person and therefore lack credibility. Furthermore, the Board notes that most of the evidence submitted by appellant on reconsideration concerns her condition prior to March 2006, when she alleged the recurrence occurred. The only note submitted with regard to her condition after that date was a medical status report by a physician with an illegible signature dated December 7, 1997 and this does not state the origin of her injury but rather indicates her work limitations. Accordingly, this report is not relevant to the question of whether appellant sustained a recurrence in February 1998.

Appellant has not submitted any relevant and pertinent new evidence, advanced a legal argument not previously neither considered by the Office nor argued that it erroneously interpreted a specific point of law. She contended that she did not have legal counsel. Although appellant may be represented by an attorney before the Office,[14] there is no provision in the Act requiring that it provide an attorney to appellant and section 10.702 of the implementing regulations notes that appellant is solely responsible for paying legal fees and other charges.[15] Thus, the Board finds that appellant has not met the criteria to have the Office reopen her case for review on the merits.[16]

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability causally related to her accepted employment injury. Furthermore, the Board finds that the Office properly declined to review appellant's claim on the merits pursuant to 5 U.S.C. § 8128(a).

[13] *See L.H.*, 59 ECAB ___ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

[14] *See* 20 C.F.R. § 10.700.

[15] 20 C.F.R. § 10.702.

[16] *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007) (when an application for reconsideration 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).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 30 and August 1, 2007 are affirmed.

Issued: June 9, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board