

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOANNE TRACY and U.S. POSTAL SERVICE,  
POST OFFICE, Liberty Lake, WA

*Docket No. 2000-1067; Submitted on the Record;  
Issued July 11, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability causally related to her June 22, 1990 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 25, 1998.

The Board has duly reviewed appellant's claim on appeal and finds that she failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her June 22, 1990 employment injury.

Appellant, a clerk, filed a claim on July 23, 1990 alleging that on June 22, 1990 she bruised her coccyx when a chair rolled away from her. The Office accepted appellant's claim and she did not lose time from work. On May 28, 1996 appellant filed two claims for occupational disease. Appellant alleged that her condition of spondylitis was accelerated and worsened due to her 1990 employment accident.<sup>1</sup> In a letter dated June 21, 1996, the Office noted that appellant attributed her alleged conditions to prior injuries rather than alleging additional new exposures or factors of employment. By letter dated June 25, 1996, the Office requested additional factual and medical information from appellant. In a decision dated February 19, 1997, the Office found that appellant had not met her burden of proof in establishing that her condition of spondylitis was accelerated or aggravated by the June 22, 1990 employment injury. Appellant requested an oral hearing and by decision dated February 19, 1998, the hearing representative reviewed the evidence and denied appellant's claim for a recurrence of disability causally related to her June 22, 1990 employment injury. Appellant requested reconsideration on March 27, 1998. By decision dated June 25, 1998, the Office denied appellant's request finding that she failed to submit relevant new evidence.

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<sup>1</sup> Appellant filed a second claim and alleged that she developed fibromyalgia due to her June 22, 1990 and April 19, 1993 employment injuries. The Office has not issued a final decision addressing this claim.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing May 28, 1996 and her June 22, 1990 employment injury.<sup>2</sup> 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.<sup>3</sup>

In support of her claim for recurrence of disability, appellant submitted several reports from Dr. P.Z. Pearce, a Board-certified family practitioner. On November 22, 1993 Dr. Pearce noted appellant's 1993 shoulder injury and diagnosed cervical spondylitis. On May 11, 1994 Dr. Pearce diagnosed cervical spondylitis, chronic shoulder strain and bilateral carpal tunnel syndrome. He indicated that appellant could perform sedentary duty. In a report dated April 18, 1994, Dr. Pearce repeated his diagnoses. On March 15, 1994 Dr. Pearce stated that appellant's April 19, 1993 injury aggravated her cervical spondylitis, which he stated was the result of a genetic predisposition and repetitive minor trauma. On November 5, 1997 Dr. Pearce completed a work restriction evaluation and indicated that appellant had no change.

These reports are not sufficient to meet appellant's burden of proof in establishing a causal relationship between her diagnosed condition of spondylitis and her accepted employment injury of June 22, 1990. Dr. Pearce did not mention this employment injury and did not offer an opinion on the causal relationship between this injury and her current condition. There is no other medical evidence before the Board on merit review addressing the diagnosis of spondylitis. Therefore, the Board finds that the Office properly denied appellant's claim.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on June 25, 1998.

Appellant requested reconsideration of the February 19, 1998 decision on March 27, 1998. In support of her request, appellant resubmitted the medical evidence from Dr. Pearce, already included in the record. Appellant also submitted additional new medical evidence.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; (2) or advancing a point of law or a fact not previously considered by the Office or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Section 10.138(b)(2) 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 review the merits of the claim.<sup>5</sup>

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

In this case, the medical evidence from Dr. Pearce is repetitious. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.<sup>6</sup>

Appellant also submitted additional new medical evidence consisting of notes and reports from Dr. Judith A. Heusner, a physician Board-certified in occupational medicine. On February 17, 1998 Dr. Heusner noted appellant's diagnosis of cervical spondylosis and fibromyalgia. She noted that appellant had coccygeal pains following a fall. Dr. Heusner stated that appellant's conditions were chronic and rendered her totally disabled. In a report dated August 30, 1994, she stated that appellant had persistent symptomatology some of which could be linked to her April 19, 1993 employment injury. Dr. Heusner submitted notes dated August 5 and July 29, 1994.

These reports are not sufficient to require the Office to reopen appellant's claim for review of the merits. Dr. Heusner did not specifically mention appellant's June 22, 1990 employment injury and did not provide any medical opinion regarding the causal relationship between this accepted employment injury and any continuing condition. As this medical evidence did not address the issue for which the Office denied appellant's claim, the causal relationship between her spondylitis and her accepted employment injury, the evidence is not relevant and did not require the Office to reopen appellant's claim for merit review.

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<sup>6</sup> See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The June 25 and February 19, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
July 11, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member