

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on December 17, 1998 causally related to her August 21, 1998 employment injury; and (2) whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

This case has been before the Board previously. By decision dated February 22, 2002, the Board adopted a March 1, 2001 decision, in which an Office hearing representative relied upon the opinion of an impartial medical specialist and found that appellant failed to establish that she sustained a recurrence of disability on December 17, 1998 causally related to her August 21, 1998 employment injury.<sup>1</sup> The law and facts as set forth in the previous Board decision is incorporated herein by reference.<sup>2</sup>

Subsequent to the Board's February 22, 2002 decision, on March 4, 2002 appellant expressed her disagreement with the Board's decision and requested that the Office reopen her claim. On October 1, 2002 she requested reconsideration and submitted a June 27, 2002 decision in which, an administrative law judge for the Social Security Administration (SSA) awarded her disability benefits. Appellant also submitted duplicates of medical evidence previously of record.<sup>3</sup> By merit decision dated February 18, 2003, the Office denied modification of the prior decision. The Office noted that the only new evidence submitted was the SSA decision and noted that the criteria for awarding benefits under the SSA were different from those under the Federal Employees' Compensation Act. On January 14 and 27, 2004 appellant again requested reconsideration and again submitted medical evidence previously of record.<sup>4</sup> In a decision dated January 29, 2004, the Office denied her reconsideration request, finding that she did not present a new legal argument or show that the Office erroneously applied or interpreted a point of law. The Office further found that the evidence submitted was previously of record and, therefore, insufficient to warrant 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.<sup>5</sup>

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<sup>1</sup> Docket No. 01-1594 (issued February 22, 2002).

<sup>2</sup> At the time of the August 21, 1998 injury appellant was a 53-year-old biological science technician. She began working limited duty and her last day of federal employment was December 4, 1998. On December 7, 1998 appellant began working as a state employee at the same facility.

<sup>3</sup> This consisted of cervical and thoracic spine x-rays dated February 14, 2000 and reports by Dr. H. Chen dated January 2, 2001 and Dr. Carl B. Field dated January 10, 2001.

<sup>4</sup> Appellant again submitted the February 14, 2000 x-ray reports.

<sup>5</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

As stated above, this case has been before the Board previously. The evidence submitted subsequent to the Board's February 22, 2002 decision consists of duplicates of medical evidence previously of record<sup>8</sup> and a decision dated June 27, 2002, in which an SSA administrative law judge found that appellant was entitled to benefits commencing December 14, 2000. Appellant generally contended that an award of SSA benefits for disability retirement established that she was disabled under the Social Security Act. The Board, however, notes that the fact that appellant was entitled to benefits under one Act does not establish entitlement to benefits under the other. The findings of other administrative agencies have no bearing on proceedings under the Federal Employees' Compensation Act, which is administered by the Office and the Board.<sup>9</sup> A determination made for disability retirement purposes is not determinative of the extent of physical disability or impairment for compensation purposes. The two relevant statutes (Social Security Act and the Federal Employees' Compensation Act) have different standards of medical proof and the question of disability found under one statute does not prove disability under the other. For a disability determination under the Federal Employees' Compensation Act, a claimant's injury must be shown to have arisen during the course of employment due to compensable factors of federal employment. Under the Social Security Act, conditions which are not work related may be considered in determining disability. Furthermore, the Board notes that the Social Security Act found appellant disabled effective December 2000, where as, the claimed recurrence occurred in December 1998. Thus, in the instant case, the Board finds the Social Security Act's disability finding was not binding upon the Office in adjudicating appellant's recurrence claim.<sup>10</sup> Similarly, as she submitted no new medical evidence and failed to establish that she had a change in the nature or extent of her modified duties,<sup>11</sup> the Board finds that appellant has failed to discharge her burden of proof to establish that she sustained a

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<sup>6</sup> See *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Supra* notes 3 and 4.

<sup>9</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 2.

recurrence of disability on December 17, 1998 causally related to her August 21, 1998 employment injury.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).<sup>13</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>14</sup> Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

With her January 2004 reconsideration requests, appellant submitted duplicates of February 14, 2000 x-rays of the cervical and thoracic spine and argued that she was still disabled and that the medical evidence, as demonstrated by the above-mentioned x-rays, should be reconsidered.

The Board initially notes that the February 14, 2000 x-rays reports had been previously considered by both the Board and the Office. Similarly, appellant had previously made the above-mentioned arguments to both the Office and the Board. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>16</sup> Appellant, therefore, did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Further, she failed to submit relevant new and pertinent evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, she was not entitled to a merit review.<sup>17</sup>

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<sup>12</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>13</sup> 20 C.F.R. § 10.608(a).

<sup>14</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>15</sup> 20 C.F.R. § 10.608(b).

<sup>16</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

<sup>17</sup> *See James E. Norris*, *supra* note 9.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on December 17, 1998 causally related to the August 21, 1998 employment injury and that the Office properly refused to reopen appellant's claim for merit review on January 29, 2004.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 29, 2004 and February 18, 2003 are affirmed.

Issued: June 25, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member