

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after September 14, 2002 causally related to her March 8, 2001 employment injury; and (2) whether the Office properly declined to reopen appellant's claim for reconsideration.

FACTUAL HISTORY

On March 8, 2001 appellant, then a 46-year-old rural carrier filed a traumatic injury claim alleging that she sustained a back injury lowering a bushel of grapefruits to a customer's porch.¹ The Office accepted appellant's claim for lumbar strain on July 2, 2001. Appellant returned to limited-duty work on August 13, 2001. Appellant underwent a functional capacity evaluation on December 26, 2001 which demonstrated that she could perform medium level work 8 hours a day, lifting up to 45 pounds. The employing establishment returned appellant to full duty in her date-of-injury position on January 10, 2002 which required lifting up to 70 pounds.

Appellant filed a recurrence of disability claim on September 25, 2002 alleging that on September 14, 2002 she sustained a recurrence of total disability due to her March 6, 2001 employment injury. In support of her claim, appellant submitted a report dated September 12, 2002 from Dr. Kevin W. Kopera, a physician Board-certified in physical medicine and rehabilitation, noting that appellant's emotional problems manifested themselves by increasing thoracic myofascial pain. Dr. Amaya completed a report on September 18, 2002 and stated that appellant had severe muscle spasm throughout her neck on the right. The employing establishment responded to appellant's claim and asserted that appellant stopped work due to an official discussion.

Appellant alleged that she managed to return to her date-of-injury position by utilizing pain medication, back rubs and heating pads. She stated that she came home in pain and exhausted. Appellant attributed her condition to repetitious reaching that strained the same injured muscles over and over again.

On October 15, 2002 Dr. Kopera examined appellant and found that she demonstrated myofascial pain in the thoracic region. He stated that appellant was quite emotional and that this was a major factor for her disability.

By decision dated January 9, 2002, the Office denied appellant's claim for recurrence of disability finding that the evidence suggested that she had not sustained a recurrence of disability, but was instead claiming a new thoracic injury as a result of an employment-related emotional condition. Appellant requested an oral hearing on November 22, 2002.

Dr. Amaya completed a duty status report on October 3, 2002 diagnosing anxiety and depression as well as severe back and neck muscle spasm. He indicated that appellant could not resume work, but that she could perform her regular work duties. Dr. Amaya stated that appellant's diagnosis was due to her injury.

On January 16, 2003 Dr. Kopera diagnosed significant depression and myofascial pain in the thoracic region. Appellant also submitted reports from Dr. Edward H. Booker, a Board-certified family practitioner, dated March 22, 1999 and May 7, 2001 diagnosing chronic anxiety disorder.

¹ Appellant's physician, Dr. F. Antonio Amaya, a psychiatrist, indicated that appellant had a preexisting nonemployment-related depression and anxiety.

Appellant testified at the oral hearing on June 26, 2003. She described her initial employment injury to her low back. Dr. Kopera submitted a report dated July 18, 2003 stating that appellant had chronic pain in the thoracic and lumbar regions. He described appellant's findings as primarily emotional issues and refilled her prescriptions.

By decision dated September 11, 2003, the hearing representative affirmed the January 9, 2002 decision, noting that none of the medical evidence in the record discussed a change in the nature and extent of appellant's injury-related condition on or after September 14, 2002.

Appellant requested reconsideration on December 14, 2003 and submitted additional medical evidence. In a note dated November 24, 2003, Dr. Kopera stated that he had followed appellant on a long-term basis for chronic muscular pain in the thoracic and lumbar regions. He noted that appellant was very emotional regarding her condition and continued her pain medication. In a report of the same date, Dr. Kopera stated:

“[Appellant] has been followed since her original work injury on March 6, 2001. She continues to have difficulties related to that work injury for which she continues to be seen. [Appellant] has been followed on a regular basis and has never been formally released from my care. She continues to complain of thoracic pain stemming from her original work injury of March 6, 2001.”

Dr. Amaya completed a report on November 29, 2003 diagnosing multiple fragments of occupational/post-traumatic dystonia, moderate to severe chronic pains and spasms as well as mood disorder due to chronic pain with major depressive-like episode and anxiety disorder due to chronic pains with generalized anxiety.

The Office denied appellant's claim by decision dated March 2, 2004 finding that medical evidence did not establish that her disability was due to her accepted employment injury.

Appellant requested reconsideration on May 27, 2004. She submitted a narrative statement describing her initial employment injury, her return to work and resultant use of sick leave in an attempt to perform her job duties. Appellant stated that she was unable to work a full week and that when she exhausted her leave she “simply broke down.” She alleged that her condition adversely impacted her daily living activities and admitted that she was depressed as a result of the changes in her life style. In addition, appellant submitted a report dated March 22, 2004 from Dr. Kopera diagnosing myofascial pain in the thoracic region, depression and anxiety.

By decision dated June 23, 2004, the Office denied reconsideration, finding that she failed to raise substantive legal questions nor include new and relevant evidence with her request for reconsideration.²

² On May 25, 2004 the Office made a preliminary determination that appellant had received an overpayment of compensation. As the Office has not issued a final decision addressing an overpayment, the Board will not consider this issue on appeal. 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴

ANALYSIS -- ISSUE 1

Appellant, a rural carrier, returned to her date-of-injury position with a lifting restriction of 45 pounds. Her position required the ability to lift 70 pounds. Appellant worked in this position from January 10 until September 14, 2002 at which time she filed a claim for recurrence of disability asserting that she was totally disabled due to her March 8, 2001 employment injury. Appellant has not alleged that her limited-duty job requirements changed. Therefore, in order to establish a recurrence of disability, she must establish a change in the nature and extent of her accepted employment injury of lumbar strain.

In support of her claim, appellant submitted a series of reports from Dr. Kopera, a physician Board-certified in physical medicine and rehabilitation, diagnosing myofascial pain in the thoracic region as well as emotional problems. On July 18, 2003 Dr. Kopera also noted that appellant had chronic pain in the lumbar region, but stated that her findings were primarily due to emotional issues. In reports dated November 24, 2003, Dr. Kopera stated that appellant continued to experience problems due to her March 8, 2001 employment injury, specifically thoracic pain.

Dr. Kopera did not provide a clear opinion that appellant had experienced a change in the nature and extent of her accepted injury-related condition of lumbar strain. Although he stated that appellant experienced chronic pain in the lumbar region, this statement suggests that appellant's condition has remained constant since her return to work, rather than undergoing a

³ 20 C.F.R. § 10.5(x).

⁴ *Joseph D. Duncan*, 54 ECAB ____ (Docket No. 02-1115, issued March 4, 2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

spontaneous worsening necessary to establish a recurrence of disability. Dr. Kopera also attributed appellant's ongoing disability to her emotional condition which aggravated myofascial pain in the thoracic region. The Office has not accepted that appellant sustained a thoracic injury as a result of her March 8, 2001 employment injury and Dr. Kopera has not offered any explanation for how or why her current thoracic or emotional condition are related to her employment. For these reasons, Dr. Kopera's reports are not sufficient to meet appellant's burden of proof in establishing a recurrence of total disability.

Dr. Amaya submitted a report in support of appellant's claim indicating that she had developed anxiety and depression as well as back and neck spasms as a result of her employment injuries. He also diagnosed multiple fragments of occupation/post-traumatic dystonia, moderate to severe chronic pain and spasms as well as mood disorder due to chronic pain. As noted above, the Office has accepted that appellant's March 8, 2001 employment injury resulted only in a lumbar strain, Dr. Amaya's findings of additional conditions and a mere answer of "yes" to a question on a form report of whether her diagnoses were due to her employment injury does not provide sufficient medical reasoning to establish that appellant sustained additional conditions as a result of her employment injury nor to establish a change in the nature and extent of her accepted employment injury of lumbar strain.

As appellant has not submitted the necessary medical opinion evidence to establish that she has sustained a change in the nature and extent of her accepted employment-related injury, lumbar strain, the Office properly denied her claim for a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously consideration by the Office.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS -- ISSUE 2

Appellant requested reconsideration and submitted with her application a factual statement describing her history of injury, her return to limited-duty work and her alleged recurrence of disability. This factual statement is not relevant to reason for which her claim was denied, the lack of sufficient medical opinion evidence establishing that she had sustained a

⁵ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

change in the nature and extent of her injury-related condition. Therefore, the Office was not required to reopen her claim for consideration of the merits based on her factual statement.

Appellant also submitted a report from Dr. Kopera dated March 22, 2004. This report does not contain any new evidence, but is instead repetitious of Dr. Kopera's earlier reports in that it merely provided diagnoses without any opinion that appellant had sustained a change in the nature and extent of her injury-related lumbar strain. As appellant did not submit any relevant new medical evidence, the Office properly declined to reopen her claim for consideration of the merits on June 23, 2004.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that she sustained a change in the nature and extent of her injury-related lumbar strain such that she was rendered totally disabled on or after September 14, 2002. Therefore appellant has not established a recurrence of disability due to her March 9, 2001 employment injury. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on June 23, 2004 as she failed to submit relevant new evidence, to advance relevant legal argument or to show that the Office erroneously applied or interpreted a specific point of law in her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 23 and March 2, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member