U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES L. SPRIESTERBACH and U.S. POSTAL SERVICE, POST OFFICE, Santa Ana, Calif.

Docket No. 96-1619; Submitted on the Record;
Issued April 20, 1998

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained a recurrence of disability on September 16, 1993 causally related to her September 23, 1992 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On September 23, 1992 appellant filed a claim for a traumatic injury to her neck occurring on that date when she applied her brakes to avoid a motor vehicle accident. The Office accepted appellant's claim for cervical strain. Appellant returned to her regular employment following her injury on October 7, 1992.[1]

On July 20, 1995 appellant filed a notice of recurrence of disability alleging that on September 16, 1993 she sustained a recurrence of disability causally related to her September 23, 1992 employment injury. By decision dated November 22, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish that she had a medical condition due to her September 23, 1992 employment injury. By decision dated February 29, 1996, the Office denied appellant's request for reconsideration of her claim on the grounds that the evidence submitted was insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained a recurrence of disability on September 16, 1993 causally related to her September 23, 1992 employment injury

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[2] This burden of proof includes the necessity of furnishing medical

[1] The record indicates that appellant filed other claims with the Office which were accepted for a fracture of the right thumb, knee tendinitis, an adjustment reaction and a hand sprain.

[2] *Dennis J. Lasanen*, 43 ECAB 549 (1992).

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 the employment injury and supports that conclusion with sound medical reasoning.[3] Causal relationship is a medical issue and can be established only by medical evidence.[4]

In the present case, appellant sustained cervical strain due to an injury on September 23, 1992. She returned to her regular employment duties on October 7, 1992. On July 10, 1995 she alleged that she stopped work on September 16, 1993 due to her accepted September 1992 employment injury.

In support of her claim, appellant submitted a chart note dated November 4, 1993 from her attending physician, Dr. Weiss, who noted that she had a prior employment injury to the neck which continued to cause a dull ache with occasional acute exacerbations of pain. He diagnosed chronic myofascial strain. Dr. Weiss, however, did not specifically address the cause of the diagnosed condition, relate a complete history of injury or find appellant disabled from employment.[5] Thus, his opinion is of diminished probative value.

In a form report dated April 1994, Dr. Weiss diagnosed muscle spasm of the right side of the neck and checked "yes" that the condition was due to the injury for which compensation was claimed. The Board has held that the opinion of a physician on causal relation which consists only of checking "yes" to the form's question regarding whether appellant's condition was related to the history of injury, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.[6] Additionally, Dr. Weiss found that appellant was not disabled from her employment.

In a form report and accompanying chart notes dated April 15, 1994, a physician diagnosed headache and muscle spasms and checked "yes" that the condition was due to the injury for which compensation was claimed. The physician found that appellant could resume her regular employment on April 16, 1994. In the accompanying chart note, the physician noted appellant's history of an employment injury on an unspecified date and that she had had a confrontation with her supervisor. As discussed above, a physician's checkmark indicating causation, without further explanation, is insufficient to meet appellant's burden of proof.[7]

Therefore, appellant has not submitted the necessary medical opinion evidence, supported by medical rationale, to establish that she sustained a recurrence of disability on September 16, 1993 causally related to her September 23, 1992 employment injury.

The Board further finds that the Office abused its discretion by refusing to reopen appellant's case for a review of the merits pursuant to 5 U.S.C. § 8128.

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[3] *Stephen T. Perkins*, 40 ECAB 1193 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *See Gary R. Sieber*, 46 ECAB 215 (1994).

[6] *Robert J. Krstyen*, 44 ECAB 227 (1992).

[7] *Id.*

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law or

"(ii) Advancing a point of law or fact not previously considered by the Office or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[8]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[9] 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.[10] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11]

In the present case, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability on September 16, 1993 causally related to her September 23, 1992 employment injury. In support of her request for reconsideration, appellant submitted a report dated December 4, 1995 from Dr. Arnold J. Brender, a family practitioner. Dr. Brender stated that appellant related that she "had been involved in a motor vehicle accident in 1992 and had resultant chronic neck and back pain ever since this episode." He further discussed appellant's complaints of neck pain with decreased range of motion. Dr. Brender stated that appellant "was felt to be suffering from acute exacerbation of chronic neck pain secondary to motor vehicle accident suspicious for myofascial pain syndrome and history of old fracture of the right thumb." Dr. Brender noted that a review of the medical records indicated that appellant had recovered from her injury and the recurrence of disability on September 16, 1993 but had periodic exacerbations due to daily activities, increased stress and degenerative joint disease. He opined that appellant had "chronic neck pain and some hand discomfort from her accident three years ago. When there is degenerative joint disease involved as well acute exacerbations of this condition are not unexpected and would be expected in the future."

As Dr. Brender relates appellant's current condition to her accepted employment injury, his report constitutes relevant and pertinent evidence not previously considered by the Office and is sufficient to require the Office to conduct a review of the evidence. In its February 29, 1996 decision, the Office found that Dr. Brender's opinion was speculative and not supported by objective findings. The Board has held, however, that the requirement for reopening a claim for

[8] 20 C.F.R. § 10.138(b)(1).

[9] See 20 C.F.R. § 10.138(b)(2).

[10] *Daniel Deparini*, 44 ECAB 657 (1993).

[11] *Id.*

merit review does not include the necessity to submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[12] If the Office should determine that the new evidence lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.[13]

In view of the foregoing, the case shall be remanded to the Office to issue a decision on the merits of the case.

The decision of the Office of Workers' Compensation Programs dated February 29, 1996 is reversed and the case remanded for further action consistent with this decision of the Board. The November 22, 1995 decision of the Office is hereby affirmed.

Dated, Washington, D.C.
April 20, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] *Amrit P. Kaur*, 40 ECAB 848 (1989).

[13] *Dennis J. Lasanen*, 41 ECAB 933 (1990).