U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERTHA HARDIN and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Hazard, Ky.

Docket No. 97-389; Submitted on the Record;
Issued December 22, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On September 1, 1993 appellant, then a 47-year-old postal clerk, filed a claim for traumatic injury and continuation of pay (Form CA-1) alleging that in September 1990 she developed a hernia from lifting, and that on June 25, 1993 she was "lifting and felt something pop." She also alleged right leg numbness. On the reverse side of the Form CA-1, the employing establishment indicated that appellant left work on June 25, 1993 saying that she did not feel well, and that she may need to see a doctor for an injury. Appellant was placed on light duty on June 28 until November 15, 1993 and from January 28, 1994 until April 28, 1994. Appellant was removed from her employment on November 23, 1994.

In support of her claim, appellant submitted treatment notes from Dr. Lewis P. Hicks, a Board-certified gynecologist, dated October 23, 1990 and treatment notes from Dr. Michael E. Daugherty, a Board-certified general surgeon, dated from 1990 and 1991. These treatment notes pertained to appellant's right inguinal hernia and the surgery to repair the hernia.

There were intermittent treatment notes from Dr. Price Sewell, a family practitioner. In a March 18, 1993 treatment note, he noted finding no hernia but indicated that there were probable adhesions from an old surgery. In a June 25, 1993 treatment note, Dr. Sewell noted that appellant's right side had been bothering her for six months and that she had numbness in the right leg. In a July 7, 1993 treatment note, he noted that appellant had returned complaining of lower abdominal pain. Dr. Sewell noted that appellant should not lift more than 30 pounds. In a September 13, 1993 treatment note, he indicated that appellant had a recurrent inguinal hernia and that she needed limited lifting for next three months.

In a June 14, 1993 report, Dr. Allen E. Grimes, a Board-certified general surgeon, noted appellant's complaints of stomach pain, questionable pain in the right inguinal area and some

numbness over her anterior side. He found no evidence of a recurrence of the hernia. In subsequent treatment notes, Dr. Grimes noted appellant's status and continued lifting restrictions.

A Form CA-17 dated September 13, 1993 and signed by Dr. Sewell noted that on June 25, 1993, appellant was lifting a sack of mail and felt pain and numbness in the right leg. Dr. Sewell diagnosed right inguinal pain post surgical hernia repair and placed appellant on a limited lifting restriction of no more than ten pounds for two hours a day.

A Form CA-16, completed by the employing establishment indicated that on June 25, 1993, appellant was lifting a sack of mail and felt pain and numbness in the right leg. On the reverse side of the form, Dr. Sewell noted appellant's history of injury as "original hernia surgery in 1990 reinjured 1993." He diagnosed right inguinal hernia and indicated that appellant's condition was caused or aggravated by repetitive lifting in her employment. Dr. Sewell recommended surgery for hernia repair and restricted appellant's activities. He listed the period of appellant's disability as October 30 to November 15, 1990, and noted that appellant could resume light duty on November 15, 1990.

In a note to appellant's employee file dated July 1, 1993, the employing establishment indicated that appellant was contacted to ascertain whether her condition was job related. Appellant advised the official that she did not know but her doctor would tell her.

On October 26, 1993, appellant filed a CA-1 form which indicated that in September 1990 she was on a job that had a lot of heavy parcels, and that everyday she had pain in her lower stomach which felt like it was tearing. She noted that she had right inguinal hernia surgery on October 30, 1990.[1]

In a November 22, 1993 decision, the Office denied appellant's claim because the evidence was found to be insufficient to establish that she sustained an injury in the performance of duty on June 25, 1993, nor that she sustained a right inguinal hernia in the performance of her duty in October 1990.

By letter dated December 8, 1993, appellant requested an oral hearing. Thereafter appellant submitted additional medical evidence.

Appellant submitted a treatment note from Dr. Sewell dated November 23, 1993. He indicated that appellant had back pain and that her right upper leg hurt. In a December 6, 1993 treatment note, Dr. Sewell again treated her for back and leg pain.

A Form CA-17, duty status report, dated January 25, 1994 was prepared by Dr. Sewell. He noted that on June 25, 1993 appellant was lifting and stacking mail when she felt pain and numbness in her right leg. His description of clinical findings included "back and hip bulging disc." Dr. Sewell placed appellant on work restrictions, specifying that she could not lift more than ten pounds for two hours a day.

[1] Appellant also filed a CA-1 form on September 13, 1993 which stated that on June 25, 1993 she "was lifting and felt something pop." In that form, appellant omitted the reference to the September 1990 injury.

In a treatment note dated March 4, 1994, Dr. Jeffrey Prater, an employing establishment contract physician, noted that appellant complained of pain and numbness in her right leg and back since June 25, 1993 which she attributed to a work injury she incurred while lifting mail at work. He noted appellant's prior treatment for inguinal hernia, noted a lumbar computed tomography scan and diagnosed "possible" lumbar strain, and "possible" abductor muscle strain of the right thigh. Dr. Prater indicated that it was doubtful that her symptoms were due to a lumbar spine condition. He recommended continued work restrictions.

In a December 16, 1993 report, Dr. James Thompson, a Board-certified neurologist, noted appellant's history and opined, with regard to appellant's presurgical and post-surgical inguinal pain, that in view of appellant's contentions that these pains were work related, he presumed her assertion was correct as he had no other history or information on the matter.

In a January 21, 1994 treatment note, Dr. Sewell noted that Dr. Thompson released appellant to return to work and that he thought appellant was well enough to return to work. In a February 7, 1994 treatment note, the doctor noted appellant returned complaining of "lower back pain, pain in lower abdomen." The doctor continued to treat appellant at least twice a month until August 31, 1994 for complaints of low back pain and leg pain, for which he prescribed medication.

In a decision dated June 9, 1995, an Office hearing representative affirmed the Office's November 22, 1993 decision, finding that appellant had not established a work-related hernia or low back injury. The hearing representative questioned why appellant delayed filing claims for the alleged injuries and found that the medical evidence was insufficient to establish that she sustained an injury in September 1990 or June 1993.

Appellant's counsel requested reconsideration on June 5, 1996. In support of his request, the attorney contended that CA-16 forms supported that appellant sustained an injury as alleged. The attorney submitted an August 28, 1995 statement from a coworker indicating that the coworker remembered, on an unspecified date, appellant telling him that the employing establishment would not give her claim forms. The attorney also submitted a July 21, 1995 decision, of the administrative law judge for the Social Security Administration[2] and a July 5, 1995 report, from Dr. Philip S. Backus, a psychiatrist, regarding appellant's psychiatric evaluation. Dr. Backus noted the history provided by appellant but did not specifically render an opinion on whether particular work factors caused or aggravated a hernia or back condition.

By decision dated July 25, 1996, the Office declined to reopen appellant's claim for a review on the merits because it was found that her request for reconsideration did not contain new evidence or legal argument.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

[2] The Administrative Law Judge found appellant disabled, under Social Security Administration standards, since April 30, 1994.

The only decision before the Board on this appeal is the Office's July 25, 1995 decision which denied appellant's request for a review of the merits of her claim under 5 U.S.C. § 8128(a). Since more than one year elapsed between the date appellant filed her appeal on October 23, 1996 and the prior Office decision's dated November 22, 1993 and June 8, 1995, the Board lacks jurisdiction to review those prior decisions.[3]

Section 8128(a) of the Federal Employees' Compensation Act (FECA) vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[4] The regulations provide 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; or (2) 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.[5] When 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 reviewing the merits of the claim.[6] 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.[7] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[8] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[9]

In the instant case, the Office denied appellant's claim because she failed to establish that she sustained a back injury in the performance of duty on June 25, 1993, or that she sustained a hernia in the performance of duty on October 1990. Appellant argues on reconsideration that the original CA-16 form completed by her supervisor is sufficient to establish fact of injury. Contrary to appellant's contention, however, by signing the CA-16 form Mr. Reynolds did not obligate the Office to accept the claim.[10] He merely recorded appellant's description of the injury. Moreover, the CA-16 form was already part of the record when the Office rendered its prior decisions, and was specifically discussed in the hearing representative's June 9, 1995

[3] 20 C.F.R. § 501.3(d) requires that an appeal must be filed within on year from the date of issuance of the final decision of the Office.

[4] 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[5] 20 C.F.R. § 10.138(b)(1).

[6] 20 C.F.R. 10.138(b)(2).

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[8] *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

[9] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

[10] When the employing establishment issues a CA-16 form to a physician for treatment, the Office must pay for treatment provided by the physician until the authorization is rescinded, or from sixty days from the date of the issuance of the form. §10.402(b). Such authorization creates a contractual obligation, which does not involve appellant directly, to pay for the cost of this examination regardless of the action taken on the claim. *John J. Carlone*, 41 ECAB 354 (1989); *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986).

decision. Since the CA-16 form was considered at the time of the Office's prior decisions, it is repetitious evidence and thereby insufficient to warrant a review of the case on the merits. Contentions made regarding whether the employing establishment withheld claim forms also do not have a reasonable color of validity since, the issue in this case is essentially medical in nature and because the coworker statement submitted is not contemporaneous with either claimed injury and is nonspecific as to when appellant's statement was uttered and which claimed injury was involved.

Dr. Backus' report is not relevant and pertinent as the doctor addressed appellant's psychiatric condition and not the physical claims that were denied by the Office. Thus, it is not sufficient to require reopening the claim for a merit review.

Furthermore, the July 21, 1991 Administrative Law Judge decision is not sufficient to require a merit review as the Board has held that entitlement to benefits under one act does not establish entitlement to benefits under Federal Employees Compensation Act. In determining whether an employee is disabled under the Act, the findings of the Social Security Administration are not determinative of disability under the Act. The Social Security Act and the Act have different standards of medical proof on the question of disability. Therefore, disability under one statute does not establish disability under the other statute. Moreover, under the Act, for a disability determination, appellant's injury or occupational disease must be shown to be causally related to an accepted injury or factors of his federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination.[11]

Consequently, appellant has not established that the Office abused its discretion under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office, or that she submitted relevant and pertinent evidence not previously considered by the Office. [8]

[11] *Daniel Deparini*, 44 ECAB 657, 660 (1993).

Accordingly, the July 25, 1996 decision of the Office of Workers' Compensation Programs is affirmed.[12]

Dated, Washington, D.C.
December 22, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[12] Appellant submitted x-ray reports after the issuance of the Office's final decision. The Board has no jurisdiction to review these documents for the first time on appeal; *see* 20 C.F.R. § 501.2(c).