U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE M. PETERSON and U.S. POSTAL SERVICE,
POST OFFICE, Westlake, Ohio

Docket No. 97-94; Submitted on the Record;
Issued November 3, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are (1) whether appellant has met her burden of proof in establishing that she sustained an recurrence of disability after June 1993 that was causally related to her accepted June 5, 1991 employment injury of right knee contusion and sprain and permanent aggravation of degenerative arthritis; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record for merit review pursuant to appellant's request for reconsideration under section 8128 of the Federal Employees' Compensation Act constitutes an abuse of discretion.

On June 20, 1991 appellant, then a 46-year-old clerk, filed a notice of traumatic injury and claim alleging that she sustained an injury to her right knee on June 5, 1991. Appellant stopped work on June 20, 1991 and returned to work on June 25, 1991. The Office initially accepted appellant's claim for right knee contusion. On August 12, 1991 appellant filed a claim for a recurrence of disability beginning June 20, 1991. On September 18, 1991 the Office accepted appellant's claim for right knee sprain and contusion. On October 30, 1991, the Office authorized arthroscopic surgery which appellant underwent on December 5, 1991. On October 4 and December 5, 1991 appellant filed claims for recurrence of disability beginning September 23 and December 4, 1991, respectively. On December 30, 1991 the Office accepted these claims. On March 2, 1992 appellant returned to work on limited duty. On March 6, 1992 appellant filed another claim for recurrence of disability beginning March 5, 1991. On July 6, 1992 the Office accepted appellant's claim for recurrence and subsequently, appellant's claim was extended to include aggravation of degenerative arthritis. The employing establishment offered appellant a temporary limited duty assignment as a modified station branch clerk with physical restrictions of standing, walking, bending and twisting as needed for personal comfort, sitting eight hours a day and no lifting, carrying, pushing, pulling, or climbing. On July 18, 1992 appellant's attending physician, Dr. Lawrence Bilfield, a Board-certified orthopedic surgeon, approved the offered position. On September 14, 1992 appellant returned to work ful -time in the offered limited-duty position. On March 22, 1993 appellant received a notice of proposed removal from the employing establishment due to alleged conduct unbecoming a postal employee and

misappropriation of postal funds. Appellant's last day in pay status was April 29, 1993. Appellant pled guilty to one count of misappropriation of postal funds in the United States District Court of Northern Ohio. On January 30, 1995 appellant was formally separated from her position with the employing establishment due to conduct unbecoming a postal employee and misappropriation of postal funds.

On April 28, 1995 appellant filed a claim for recurrence of disability and wage loss beginning June 1993. On September 29, 1995 the Office denied appellant's claim on the grounds that the medical evidence did not establish that the claimed disability was causally related to her accepted employment injuries. In merit decisions dated November 9, 1995 and March 11, 1996, the Office denied appellant's requests for reconsideration on the grounds that evidence submitted was not sufficient to warrant modification of the prior decision. In a decision dated June 21, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and repetitive in nature and was not sufficient to warrant reopening the record for merit review.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability after June 1993 that was causally related to her accepted employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or medical evidence of record establishes that she can perform the work of a light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of the 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 light-duty job requirements.[1]

In the present case, appellant has not presented any rationalized medical evidence which is sufficient to establish that she was not capable of performing her light duty position after June 1993. Initially appellant submitted a report dated July 6, 1993 by Dr. Bilfield in which he indicated that appellant sustained an on-the-job injury on June 5, 1991 and this injury kept appellant disabled from June 1993 until the present. He noted her history of arthroscopic surgery and a post-surgical diagnosis of post-traumatic grade 3 of medial femoral condyle. Dr. Bilfield concluded that appellant's right knee injury was directly related to her original injury and that she could not do her previous job. In reports dated September 29 and October 23, 1995, Dr. Bilfield essentially reiterated his July 6, 1995 report, however, he added a diagnosis of progressive significant post-traumatic chondrosis. In the September 29, 1995 report, Dr. Bilfield also reported that while the duties of a window technician were reasonably sedentary it definitely required some ability to stand and move which appellant was incapable of doing. However, in the same report, Dr. Bilfield also noted that appellant had participated in a dancersize class at a community college she attended but that this class was just for a sports/arts credit and her college instructor advised her that she could participate at her own rate. In a report dated December 5, 1995, Dr. Bilfield reiterated that appellant had post-traumatic chondritic changes in her knee and

[1] *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

explained that there was no doubt that the trauma to the knee had caused these changes. In addressing appellant's physical capabilities, he indicated that "it is not to say that [appellant] cannot stand for any length of time, but to say that frequent movement would cause severe and problematic disability. Appellant also submitted office notes from Dr. Bilfield. None of the reports or office notes by Dr. Bilfield are sufficient to establish that appellant was totally disabled from her light-duty position as he has not addressed the physical requirements of that position which was not only sedentary in nature, but allowed appellant to stand, walk, bend and twist, as she deemed fit. His indication in the December 5, 1995 report that appellant could not move frequently is not consistent with the listed physical requirement of appellant's limited-duty position which did not require frequent movement. Moreover, Dr. Bilfield's reports and notes fail to address how appellant was capable of participating in any capacity in dance classes if she could not perform the sedentary duties of her last position which required minimal movement and also fail to address the possible impact of these classes on her accepted injury. In addition, the statement from appellant's college instructors which indicate that she was allowed to participate in her dance courses at her own rate do not constitute medical evidence as these statements are not by physicians. Therefore, these statements do not constitute probative evidence in this regard.[2] In addition, they are not sufficiently detailed as to add factual information concerning whether appellant's participation in the classes was more or less physically stressful than her light-duty position. Thus, appellant did not establish a recurrence of disability after June 1993.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.[3] 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.[4] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

With her April 26, 1996 request for reconsideration, appellant submitted a report dated April 2, 1996 by Dr. Bilfield, office notes and an x-ray of the right knee which showed marked lateral joint space narrowing in the right knee. Appellant also submitted a statement from her college dance teacher which indicated that attendance was the primary criteria for dance credit in

[2] *See generally Joseph N. Fassi*, 42 ECAB 677 (1991); *Betty G. Myrick*, 35 ECAB 922 (1984).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[5] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

her class as it does not provide any additional factual information concerning the extent of appellant's participation. The statement from appellant's dance instructor is cumulative in nature. The office notes and medical report by Dr. Bilfield are repetitive as the office notes are similar to those previously considered and the medical report reiterates that appellant is disabled by her accepted employment injuries without adequate explanation of this conclusion. Appellant has not submitted sufficient evidence on reconsideration to warrant merit review of the prior decisions.

The decisions of the Office of Workers' Compensation Programs dated June 21 and March 11, 1996 and November 9 and September 29, 1995 are hereby affirmed.

Dated, Washington, D.C.
November 3, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member