

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA A. PARSONS and DEPARTMENT OF THE NAVY,  
NAVAL WEAPONS CENTER, China Lake, Calif.

*Docket No. 96-2686; Submitted on the Record;  
Issued September 24, 1998*

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DECISION and ORDER

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

The issues are: (1) whether appellant has established that she sustained a recurrence of disability causally related to her June 27, 1991 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 June 27, 1991 appellant, then a 34-year-old painter, filed a claim for a traumatic injury to her right hand, shoulders, and neck occurring on that date when she "went to sit down in [a] chair [and] it fell over backwards." The Office accepted appellant's claim for chronic cervical strain/sprain, chronic bilateral shoulder strain/sprain, and right wrist trauma superimposed on preexisting carpal tunnel syndrome. Appellant returned to limited-duty employment on July 8, 1991. On July 25, 1995 appellant accepted a permanent limited-duty position with the employing establishment as a materials controller.

On December 4, 1995 appellant submitted claims for compensation requesting compensation for four hours per day from December 4, 1995 to March 7, 1996. By letter dated January 31, 1996, the Office informed appellant of the evidence necessary to establish that she sustained a recurrence of disability such that she could not perform her light-duty employment. By decision dated March 18, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of disability due to her June 27, 1991 employment injury. By decision dated April 18, 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 causally related to her June 27, 1991 employment injury.

Where 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 establishes that the employee 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 to show that he or she cannot perform such light duty. 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 light-duty job requirements.<sup>1</sup>

In the present case, appellant sustained chronic cervical strain, bilateral shoulder strain and right wrist trauma due to an injury on June 27, 1991. Appellant returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability beginning December 4, 1995.

Appellant further has not submitted any relevant medical evidence which would establish that she sustained a recurrence of disability causally related to her accepted employment injury. In support of her claim, appellant submitted reports from Dr. William H. Mouradian, a Board-certified orthopedic surgeon. In a report dated October 6, 1995, Dr. Mouradian noted that appellant currently worked modified duty, diagnosed cervical disc degeneration with bulging and recommended further objective testing. He further found that appellant was not temporarily totally disabled.<sup>2</sup>

In a progress note dated December 1, 1995, Dr. Mouradian noted that as the discogram did not reveal symptomatic disc degeneration he had nothing surgical to offer appellant and recommended that she temporarily work half days. In progress notes dated January 5 and February 2, 1996, Dr. Mouradian noted appellant's improvement after reducing her work schedule. These reports are not sufficient to meet appellant's burden of proof as Dr. Mouradian did not discuss whether appellant had any current disability causally related to her accepted employment injury.

Further, the remaining reports from Dr. Mouradian do not support appellant's claim for a recurrence of disability. In a report dated February 14, 1996, Dr. Mouradian related that while appellant required work restrictions he could not "support her claim for disability retirement." In a report dated March 2, 1996, Dr. Mouradian noted that appellant originally worked for the employing establishment as a painter and currently worked in an office job as a buyer. He stated:

"From an orthopedic perspective, she would be entitled to an orthopedic retirement if her usual and customary job is considered to be that of a painter. If her usual and customary job is considered to be that of a desk person buyer, then I do not feel the evidence at this point is sufficient to substantiate a medical retirement."

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>2</sup> A discogram of appellant's cervical spine, performed on November 2, 1995, revealed mild degeneration of the C5-6 disc but no disc protrusion and mild degenerative spondylosis.

As Dr. Mouradian did not find appellant disabled from her limited-duty employment, his opinion does not support her claim that she sustained a recurrence of disability.<sup>3</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>4</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

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

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 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.”<sup>5</sup>

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.<sup>6</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.<sup>7</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>8</sup>

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 causally related to her

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<sup>3</sup> In a note dated December 1, 1995, Dr. Edward McPherson, an orthopedic surgeon and appellant's attending physician, stated that she could work only four hours per day until January 6, 1995; however, he does not render a diagnosis or discuss the cause of appellant's disability and thus his report is of little probative value.

<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

<sup>5</sup> 20 C.F.R. § 10.138(b)(1).

<sup>6</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>7</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>8</sup> *Id.*

accepted employment injury. In support of her request for reconsideration, appellant submitted a list of her medications and its side effects. However, as this evidence does not address the issue of causal relationship between appellant's claimed disability and her June 27, 1991 employment injury, it is neither relevant nor probative. The Office, therefore, did not abuse its discretion in refusing to reopen and review appellant's claim on the merits.

The decisions of the Office of Workers' Compensation Programs dated April 18 and March 18, 1996 are hereby affirmed.

Dated, Washington, D.C.  
September 24, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member