U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. TRACY and DEPARTMENT OF VETERANS AFFAIRS, MURFREESBORO VETERANS ADMINISTRATION HOSPITAL, Murfreesboro, Tenn.

Docket No. 97-1409; Submitted on the Record;
Issued February 5, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she sustained a recurrence of disability commencing June 23, 1996, causally related to her April 27, 1986 employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further review of her case on its merits under 5 U.S.C. § 8128.

The Office accepted that on April 27, 1986 appellant sustained lumbar strain, a herniated disc at L4-5, and a subluxation at L5. Appellant returned to work on full duty on February 29, 1988.

On July 1, 1996 appellant filed a claim for recurrence of disability commencing June 23, 1996. She alleged that, after returning to work, her back was sore everyday, some days worse than others, and that at times the pain was bad enough that she had to call in sick, leave work early or rely on bed rest and heating pads. Appellant alleged that the pain in her lower back started to affect her right hip and lower leg on June 20, 1996, and that on June 23, 1996 it got severe.

Attached to appellant's claim form were some medical progress notes noting that a magnetic resonance imaging (MRI) scan and hip x-rays were negative for disease. An unnamed physician diagnosed probable pain from sciatica. A June 27, 1996 report from Dr. William J. Jekot, a Board-certified orthopedic surgeon, noted positive signs of root tension on the right but no neurologic deficit and markedly positive nonorganic testing indicating some nonorganic component to her pain perception. He noted no sign of a recurrent herniated nucleus pulposus (HNP) and diagnosed "lumbar radicular syndrome." Causation was not discussed. An unsigned neurological consult noted "hip and ankle pain, severe since June 23, 1996 and diagnosed "hip pain, etiology unknown." A bone scan of the pelvis and hips was reported as negative. Medical evidence from 1990 and before was also submitted.

By letter dated August 13, 1996, the Office requested further information, including a detailed medical narrative containing a history of injury, testing results, a definite diagnosis of condition being treated and a rationalized medical opinion supporting causal relation.

In response appellant submitted a personal statement, a limited-duty assignment offer, an MRI report showing a previous laminectomy at L4-5, a perineural scar surrounding the right L5 nerve root, and no definite recurrent HNP, and a June 27, 1996 report from Dr. Jekot diagnosing "lumbar radicular syndrome." A July 12, 1996 report from Dr. Alexander Chernowitz, a Board-certified orthopedic surgeon, was submitted which diagnosed "right lumbar myofascial pain with a right lower extremity referral pattern and/or a component of lumbar root disturbance," but which did not discuss causal relation, physical therapy reports and notes were also submitted, a July 18, 1996 work status report was submitted containing the diagnosis "low back pain" and several abbreviated reports without diagnoses listed or causal relation discussed, were submitted. Appellant additionally submitted laboratory testing results for blood chemistry, diagnostic radiology testing results noting no abnormalities, and no acute fractures or subluxations, an August 13, 1996 electromyographic (EMG) study report for the right lower extremity showing chronic progressive right L5 radiculopathy, a September 4, 1996 work status report containing the diagnosis "lumbar myofascial pain, L4 nerve root disorder" and a September 4, 1996 narrative report from Dr. Chernowitz without a definite diagnosis but with the statement: "The patient's [EMG] findings combined with her quite satisfactory response to epidural steroid injection make me feel that the recently treated round of trouble is related to the condition which was treated in 1986."

By decision dated September 30, 1996, the Office denied appellant's recurrence claim finding that the evidence of record failed to establish that her recurrence of disability was causally related to her April 27, 1986 employment injuries. The Office found that none of the submitted medical evidence provided a definite supportable diagnosis and an opinion on causal relation.

Appellant requested reconsideration, and in support she resubmitted her personal statements, resubmitted reports from Dr. Chernowitz, resubmitted the EMG report and resubmitted the June 27, 1996 report from Dr. Jekot. She also submitted a new personal statement from her son.

By decision dated January 31, 1997, the Office rejected appellant's request for further review of her case on its merits, finding that the evidence submitted in support of the request was repetitious, irrelevant and immaterial and, therefore, did not constitute a basis for reopening of the case for further review on its merits.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing June 23, 1996, causally related to her April 27, 1986 employment injuries.

An individual who claims a recurrence of disability due to an accepted employment 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. This burden includes the necessity of furnishing medical 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.[1] Causal relationship is a medical issue and can be established only by medical evidence.[2]

In the instant case, appellant has not met her burden of proof. Appellant and her son submitted extensive statements relating her current condition to her accepted employment injuries, but none of these can be considered to be probative medical evidence as neither appellant, nor her son, are "physicians" under the Federal Employees' Compensation Act.[3] The evidence from physical therapists is also not probative on a medical issue.[4] The medical evidence appellant did submit from physicians is not sufficiently complete to support her recurrence claim. Most of the medical evidence submitted lacked definitive demonstrable diagnoses, referring to nebulous conditions such as probable sciatic pain, low back pain, hip pain, ankle pain, lumbar radicular syndrome, or lumbar myofascial pain, but supporting these diagnoses with no objective medical findings nor etiologic analyses. Other diagnosed conditions included lumbar root disturbance, L4 nerve root disorder, right L5 perineural scar, and right L5 radiculopathy, which were supported by some objective testing results but which lacked any accompanying rationalized medical opinions supporting causal relation with appellant's accepted 1986 injuries. In fact several of the tests revealed positive nonorganic results or remarked "etiology unknown." Most of the testing revealed negative objective results, *i.e,*. no definite recurrent HNP, no subluxations, and no arthritis, degeneration or lesions. The only medical evidence which addressed causal relation was Dr. Chernowitz's September 4, 1996 statement that appellant's EMG findings combined with her quite satisfactory response to epidural steroid injection made him feel that the recently treated round of trouble was related to the condition which was treated in 1986. This statement is insufficient to establish appellant's recurrence claim as Dr. Chernowitz failed to offer a specific present diagnosis, failed to identify which 1986 condition was involved and failed to provide any medical rationale explaining the causal relation. Accordingly, this statement is of greatly diminished probative value and is insufficient to establish appellant's claim. As nothing else was submitted, appellant failed to establish that she sustained, on June 23, 1996, a recurrence of disability causally related to her 1986 lumbar strain, L4-5 herniated disc or L5 subluxation injuries.

With her request for reconsideration, appellant merely resubmitted medical evidence previously of record and already considered by the Office and further personal statements.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her 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 three requirements, the Office will deny the application for review without reviewing the merits of the

[1] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[2] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[3] *See Sheila A. Johnson*, 46 ECAB 323 (1994); *Sheila Arbour (Victor E. Arbour),* 43 ECAB 779 (1992); *James A. Long*, 40 ECAB 538 (1989) (lay persons are not competent to render a medical opinion)

[4] *Barbara J. Williams*, 40 ECAB 649 (1988) (physical therapists are not competent to render medical opinions).

claim.[5] 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.[6]

In this case, the only evidence appellant submitted with her request for reconsideration was duplicative of that previously submitted to the record. The Office properly found, and the Board now confirms that the entirety of the medical evidence appellant submitted upon her request for reconsideration had been previously submitted and considered, such that it was cumulative, repetitive, and substantially similar to material previously of record and hence provided no basis upon which to rest a reconsideration request. Further, appellant's lay statements, although new, are not relevant as they cannot be considered to be probative medical evidence under the Act. The Board has explained that evidence which does not address the particular issue involved,[7] does not constitute a basis for reopening a case. As appellant's lay statements are irrelevant, they do not address the issues involved and hence do not constitute a basis for reopening a claim.

In the present case, appellant has not established that the Office abused its discretion in its January 31, 1997 decision by denying her request for a review on the merits of its September 30, 1996 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office and failed to submitted relevant and pertinent evidence not previously considered by the Office. Appellant has made no such showing here.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 31, 1997 and September 30, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 5, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

[5] 20 C.F.R. § 10.138(b)(2).

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

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