U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATHANIEL HILL and U.S. POSTAL SERVICE,
POST OFFICE, Austin, Tex.

Docket No. 98-92; Submitted on the Record;
Issued July 9, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issues are: (1) whether the appellant sustained a recurrence of disability beginning May 21, 1996 causally related to his accepted February 20, 1992 lower back injury; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On February 20, 1992 appellant, a 50-year-old custodian, fell and struck the ground when he slipped on some wet grass after exiting the building of the employing establishment, injuring his elbows, back, right hip and right leg. He filed a Form CA-1 claim for benefits on February 24, 1992, which the Office accepted for back contusion and left shoulder contusion.

On July 9, 1996 appellant filed a Form CA-2 claim for benefits, alleging that he sustained a recurrence of disability beginning May 21, 1996 which was causally related to his February 20, 1992 employment injury. In support of his claim, appellant submitted an emergency room report dated May 27, 1996 from Dr. August J. Mitchon, Board-certified in emergency medicine, who stated that appellant had complained of shortness of breath, chest pains and intractable hiccups.

Appellant also submitted work restriction forms from Dr. Harold D. Lewis, an osteopath, dated June 3, June 25, July 26, July 31 and August 5, 1996, which indicated appellant had low back pain which caused limitations on stooping and bending. The June 25, 1996 work restriction form advised that appellant could work an 8-hour day with restrictions, including standing and walking (not to exceed 1 to 3 hours per day), occasional lifting up to 10 pounds and no bending or twisting. In addition, Dr. Lewis submitted a work ability report dated August 5, 1996 stating that appellant could return to regular work on August 6, 1996.

The record also contains treatment notes from May through July 1996. These included a May 22, 1996 treatment note stating that appellant had pain in his low back and a May 24, 1996 treatment note indicating appellant had left-sided low back pain extending down the left leg to

his toes and groin area. The May 24, 1996 note also indicated that appellant had stated "the therapy helped but the pain has gotten worse." In addition, the record contains results from a June 21, 1996 magnetic resonance imaging (MRI) scan indicating appellant had a "focal area" of herniated disc at L3-4 and a bulge to the annulus at L4-5.

By letter dated August 6, 1996, the Office advised appellant that it required additional medical evidence, including a comprehensive medical report, to support his claim that his current condition/or disability was causally related to his accepted February 20, 1992 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of his alleged recurrence. The Office stated that appellant had 30 days in which to submit the requested information. Appellant did not respond to this request.

By decision dated June 12, 1997, the Office denied appellant compensation for a recurrence of disability due to his accepted February 20, 1992, employment-related low back condition. The Office stated that it had advised appellant that he needed to submit additional medical evidence in support of his recurrence claim, but that he failed to respond to this request. The Office therefore found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability beginning May 21, 1996 was caused or aggravated by the February 20, 1992 employment injury.

By letter to the Office dated July 6, 1997, appellant requested reconsideration of the Office's previous decision. Appellant claimed he had not received the Office's August 6, 1996 letter requesting additional medical evidence, but he indicated that, at any rate, he believed he had already submitted all of the evidence necessary to establish that his alleged recurrence of disability as of May 21, 1996 was causally related to his accepted February 20, 1992 employment injury.

By decision dated July 6, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning May 21, 1996 causally related to the February 20, 1992 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.[1]

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of May 21, 1996 to his February 20, 1992 employment injury. For this reason, he has not

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

discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

In the present case, the Office advised appellant in its August 6, 1996 letter that it required additional medical evidence to support his claim that his alleged recurrence of disability as of May 21, 1996 was causally related to his accepted February 20, 1992 employment injury and requested that appellant submit such evidence within 30 days. Appellant, however, failed to respond to this request. Thus, the only medical evidence appellant submitted in support of his recurrence of disability claim was the May 27, 1996 emergency room report, the August 5, 1996 work ability form, work restriction forms from June to August 1996, treatment notes dated May to August 1996 and the June 21, 1996 MRI scan results he submitted with his July 9, 1996 claim. These documents indicated appellant had low back pain from May through August 1996 and had some objective findings reflecting a possible spinal disorder at L3-4 and L4-5, but do not contain a probative, rationalized medical opinion sufficient to establish that appellant's alleged recurrence of disability beginning May 21, 1996 was caused or aggravated by his February 20, 1992 employment injury. Therefore, the Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

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; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[2] 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 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]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. Appellant, in fact, did not submit any medical evidence with his request for reconsideration. This is important since the outstanding issue in the case -- whether appellant sustained a recurrence of disability beginning May 21, 1996 that was causally related to his February 20, 1992 employment injury -- is medical in nature. All the medical evidence submitted by appellant was previously of record, and considered by the Office in reaching prior decisions. Additionally, appellant's July 6, 1997 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that he sustained a recurrence

[2] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *Howard A. Williams,* 45 ECAB 853 (1994).

of his employment-related disability as of May 21, 1996 that was caused or aggravated by his February 20, 1992 employment injury, appellant failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated July 12 and June 6, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member