U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYLE A. CARRINGTON and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Ann Arbor, Mich.

Docket No. 96-1433; Submitted on the Record;
Issued March 25, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on or after May 5, 1994 due to her employment injuries; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after May 5, 1994 due to her employment injuries.

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 the medical evidence of record establishes that she 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 show that 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.[1]

In the present case, the Office accepted that appellant sustained an employment-related right groin strain and chronic lumbosacral strain at work on September 29, 1989 and employment-related lumbosacral strains on April 1 and May 19, 1992. Appellant stopped work for various periods and returned to work for the employing establishment in a light-duty position. She stopped work on May 5, 1994 and claimed that she sustained a recurrence of total disability due to her employment injuries.[2] By decision dated July 12, 1994, the Office denied

---

[1] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] Appellant indicated that she had acute back pain and sustained a depressive emotional condition related to this pain.

appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related recurrence of disability. By decisions dated September 15, 1994 and May 9, 1995, the Office denied modification of its July 12, 1994 decision and, by decisions dated December 19, 1995 and March 21, 1996, the Office denied appellant's further requests for merit review.

Appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after May 5, 1994 due to her employment injuries. Appellant submitted a July 18, 1994 report in which Dr. Richard A. Paat, an attending Board-certified internist, indicated that her lower back pain was caused by a "chronic lumbosacral strain with recurrent exacerbations" and noted that all of her "subsequent episodes" were related to her September 29, 1989 employment injury. Dr. Paat indicated that appellant's physical examination was consistently unremarkable and noted, in other reports, that appellant reported she experienced increased symptoms on May 6, 1994 after walking and getting out of the bathtub. In a report dated July 13, 1994, Dr. Glenn H. Carlson, an attending Board-certified orthopedic surgeon, diagnosed chronic strain and indicated, "In my opinion residual injuries of September 28, 1989, April 1 and May 19, 1992 are all reasonable for her chronic back sprain/strain though time off work should attempt to be a minimum with a return back to the same restrictions as stated as soon as possible." In a report dated August 31, 1994, Dr. Steven F. Habusta, an attending Board-certified orthopedic surgeon, indicated that he believed appellant had a herniated lumbar disc and suggested that she had a chronic lumbar strain related to her employment injuries. The Board has carefully reviewed these reports and notes that they are of limited probative value on the relevant issue of the present case in that they do not contain adequate medical rationale in support of their opinions on causal relationship.[3] None of these physicians described appellant's employment injuries in any detail or otherwise explained how such soft tissue injuries could cause total disability on or after May 5, 1994. Such rationale is particularly necessary due to the limited findings upon physical examination and diagnostic testing.

Appellant also did not submit sufficient medical evidence to show that she sustained employment-related disability on or after May 5, 1994 due to an emotional condition related to her orthopedic employment injuries.[4] Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[5] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

[3] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[4] The Office did not accept that appellant sustained an emotional condition due to employment factors.

[5] 5 U.S.C. §§ 8101-8193.

[6] *Id.*

In his reports dated in June and July 1994, Dr. Paat indicated that appellant sustained depression due to pain related to her employment injuries. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.[7] However, Dr. Paat's opinion is of limited probative value in relating appellant's emotional condition to this employment factor because he did not provide adequate medical rationale in support of his conclusion on causal relationship.[8] The Board notes that Dr. Paat's opinion is of limited probative value regarding appellant's emotional condition for the further reason that he does not specialize in a field peculiar to such a condition. The opinions of physicians with training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.[9] Appellant also submitted reports, dated beginning in mid 1994, from Jim Guinan, an attending clinical psychiatrist and Dr. Pratap G. Torsekar, an attending Board-certified psychiatrist. These reports, however, are of limited probative value on the relevant issue of the cause of appellant's emotional condition in that they do not contain a clear opinion on causal relationship.[10]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[11] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[12] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[13] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[14]

---

[7] *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

[8] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[9] *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).

[10] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). Dr. Guinan suggested that appellant's depression was related to pain, but he did not provide a clear opinion on this matter.

[11] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[12] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[13] 20 C.F.R. § 10.138(b)(2).

[14] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

In conjunction with her two reconsideration requests, appellant submitted additional medical evidence regarding her medical condition. In a report dated March 6, 1995, Dr. Carlson suggested that appellant continued to have a chronic low back strain due to her employment injuries. In a report dated October 31, 1995, Dr. Guinan suggested that appellant's depression was related to her pain. These reports, however, contain opinions on causal relationship similar to those contained in reports already considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[15] Appellant also submitted other medical reports regarding her back and emotional conditions but these reports did not contain any opinion on causal relationship and are irrelevant to the main issue of the present case. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[16] Appellant also submitted extra copies of reports which had already been considered by the Office.[17]

In the present case, appellant has not established that the Office abused its discretion in its December 19, 1995 and March 21, 1996 decisions by denying her request for a review on the merits of its May 9, 1995 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, 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.

[15] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[16] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[17] The record was also supplemented to include an August 25, 1995 report of Dr. Howard M. Rosenblatt, a Board-certified orthopedic surgeon, to whom the Office referred appellant. However, Dr. Rosenblatt indicated that appellant could perform her light-duty job and suggested that her low back problems were related to a congenital condition.

The decisions of the Office of Workers' Compensation Programs dated March 21, 1996, December 19 and May 9, 1995 are affirmed.

Dated, Washington, D.C.
March 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member