

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREIDA G. CHAPMAN and U.S. POSTAL SERVICE,
POST OFFICE, Lake Toxaway, NC

*Docket No. 98-1553; Submitted on the Record;
Issued November 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying a merit review of appellant's reconsideration request.

On January 18, 1991 appellant, then a 43-year-old postmaster, filed a recurrence claim alleging that her disability on and after January 7, 1991 was due to her December 2, 1985 employment injury.¹

On January 28, 1991 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained a lower back strain with partial numbness in both her legs on January 4, 1991 when she picked up a stack of catalogs.² The Office accepted a low back strain due to the January 4, 1991 injury on March 20, 1991. Appellant was released to regular work on February 1, 1991.

On January 31, 1992 appellant filed a claim for compensation (Form CA-7) from December 6, 1991 to January 23, 1992.³

¹ Appellant initially filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on January 7, 1991 she first realized that her back injury was due to a back injury sustained on December 2, 1985. This was assigned claim number A6-508119 which the Office decided was a claim for recurrence of disability.

² This was assigned claim number A6-507948. On January 18, 1991 appellant, then a 43-year-old postmaster, filed a recurrence claim alleging that her disability on and after January 7, 1991 was due to her December 2, 1985 employment injury. Appellant initially filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on January 7, 1991 she first realized that her back injury was due to a back injury sustained on December 2, 1985. This was assigned claim number A6-508119 which the Office decided was a claim for recurrence of disability.

³ This date was crossed out and the date February 12, 1992 was written above it.

By letter dated March 19, 1992, the Office informed appellant that the evidence she had submitted was insufficient to establish a recurrence of disability on or after December 6, 1991 causally related to her accepted January 4, 1992 employment-related injury. The Office advised appellant as to the definition of a recurrence of disability and the medical evidence necessary to support a claim.

By decision dated October 7, 1992, the Office denied appellant's claim on the basis that the evidence failed to establish that her disability on and after December 6, 1991 was causally related to her accepted January 4, 1991 employment injury.

In a letter dated November 16, 1992, appellant requested reconsideration and submitted a July 13, 1992 report from Dr. John C. Cannon, an attending Board-certified family practitioner.

By decision dated November 30, 1992, the Office denied appellant's request for modification of its prior decision on the basis that Dr. Cannon provided no medical rationale to support his opinion.

Appellant, in a letter dated May 12, 1993, requested reconsideration and submitted a May 3, 1993 report from Dr. Cannon and a February 4, 1991 report from Dr. W.R. Davison, a Board-certified orthopedic surgeon.

In a decision dated June 2, 1993, the Office denied appellant's request for modification of its prior decision on the basis that the evidence submitted was insufficient to establish a causal relationship between her disability and her accepted employment injury.

By letter dated November 10, 1993, appellant requested reconsideration and submitted medical records from Thoms Rehabilitation Hospital, Brevard Family Practice, Asheville MRI and Transylvania Community Hospital Radiology, a report from Dr. Cannon and reports from Newland Clinic.

By decision dated January 20, 1994, the Office denied appellant's reconsideration request on the basis that the factual evidence was incomplete as appellant failed to submit a notice of recurrence claim from (Form CA-2a).

On March 29, 1994 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of disability on and after December 6, 1991 due to her accepted January 4, 1991 employment injury.

By letter dated April 29, 1994, the Office requested appellant to submit additional medical information to bridge the gap from March 20, 1991 to January 27, 1992 and advised her as to the definition of recurrence. The Office also advised appellant as to the type of information necessary to establish a claim for recurrence of disability.

By decision dated August 3, 1994, the Office denied appellant's claim on the basis that the evidence failed to establish a causal relationship between her disability and her accepted employment injury.

Appellant, in a letter dated January 17, 1995, requested reconsideration and submitted evidence in support of her request.

In a decision dated February 23, 1995, the Office denied appellant's request for modification.

Appellant, through her congressperson, requested reconsideration.

By decision dated July 17, 1995, the Office denied appellant's request for modification on the basis that the medical evidence submitted failed to address a causal relationship between her disability and her accepted employment injury and makes no mention of her prior medical history.

By letter dated December 4, 1995, appellant requested reconsideration and submitted evidence in support of her request.

By decision dated December 26, 1995, the Office denied modification on the basis that the evidence submitted was insufficient to warrant modification.

By letter dated December 21, 1996, appellant requested reconsideration and submitted physical therapy notes dated January 11, 1995 from Janet Cress Brickhouse, LPT, and reports dated October 24, 1994 and August 7, 1995 from Dr. James J. Hoski and reports dated September 19 and 20, 1994 from Dr. Canon.

By letter dated December 20, 1997, appellant noted that she had requested reconsideration on December 21, 1996 and that no decision had been issued on her request.

By decision dated January 29, 1998, the Office denied appellant's request for reconsideration as the evidence submitted in support of appellant's request was repetitive and insufficient to warrant review of the December 21, 1995 Office decision.

As appellant filed her appeal with the Board on April 24, 1998, the only decision properly before the Board is the Office's January 29, 1998 decision denying appellant's request for reconsideration of the December 26, 1995 decision. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of an appeal.⁴

The Board finds that the Office did not abuse its discretion by denying appellant's request for reconsideration under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act.

Under section 8128(a) of the Act,⁵ the Office has the discretion to reopen a case for a review on the merits. The Office must exercise this discretion, however, in accordance with the

⁴ See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 5 U.S.C. § 8128(a).

guidelines set forth in 20 C.F.R. § 10.138, part of the implementing federal regulations, which provide in part:

* * *

“(b)(1) The claimant may obtain review of the merits of the claim by --

- (i) Showing that the Office erroneously applied or interpreted a point of law,
- (ii) Advancing a point of law or a fact not previously considered by the Office, or
- (iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) of the guidelines 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.⁶ Evidence not addressing the particular issues involved⁷ or evidence repetitive in nature or cumulative of that already in the record does not constitute a basis for reopening a case.⁸

In support of her request for reconsideration in the present case, appellant resubmitted reports dated September 19 and 20, 1994 from Dr. Cannon, a report dated September 21, 1995 from Dr. Hoski, in addition to several reports previously of record. In his September 19, 1994 report, Dr. Cannon stated that appellant “encountered some aggravating event around January 7, 1991.” In his report dated September 20, 1994, he noted that appellant sustained a job-related injury on January 4, 1991 and opined that her back problems in December 1991 were due to this injury as there was no additional injury, job related or nonjob related and that this appeared “to be a spontaneous return of the original injury.” As noted by the Office, these reports do not contain any medical rationale which support that appellant’s disability was due to her accepted employment injury. Dr. Hoski diagnosed degenerative disc disease with a lumbar sprain/strain which has resulted in chronic pain syndrome. His report is similarly defective as it is repetitious as to the causal connection between appellant’s disability and her accepted employment injury. Therefore, appellant did not submit any evidence not previously considered by the Office or advance a legal argument not previously considered by the Office in support of her request for reconsideration.

Appellant’s request for reconsideration did not show that the Office erroneously applied or interpreted a point of law, advance a point of law or fact not previously considered by the

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Office, or include relevant and pertinent evidence not previously considered by the Office. The Office's denial of appellant's request for reconsideration, by decision dated January 29, 1998, therefore, did not constitute an abuse of discretion under 5 U.S.C. § 8128(a) of the Act.

The decision of the Office of Workers' Compensation Programs dated January 29, 1998 is hereby affirmed.

Dated, Washington, D.C.
November 18, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member