

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA G. NAVES and U.S. SENATE,
U.S. CAPITOL POLICE, Washington, DC

*Docket No. 98-1263; Submitted on the Record;
Issued October 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on or about June 17, 1997 that was causally related to her November 2, 1991 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 6, 1998 request for reconsideration.

On November 2, 1991 appellant, a security aide, sustained an injury while in the performance of her duties when she slipped and fell, walking down a spiral staircase. The Office accepted her claim for the conditions of left thigh and knee contusions and left knee strain. Appellant received continuation of pay through December 2, 1991 and returned to limited duty the following day. She worked four hours a day from December 20 through December 28, 1991, and on January 2, 1992 she returned to full, unrestricted duty.

On September 5, 1993 appellant sustained a recurrence of disability that was causally related to her November 2, 1991 employment injury. She was placed on limited/restricted duty on September 9, 1993. The employing establishment terminated her employment on October 15, 1994. She thereafter received compensation on the periodic rolls. Following vocational rehabilitation efforts and medical clearance to return to full work activities with no restrictions, appellant accepted reappointment to her position as a security aide effective October 2, 1995.

The medical evidence indicated that appellant's symptoms and findings on physical examination were consistent with mild traumatic chondromalacia. On November 12, 1996 the Office issued a schedule award for a 12 percent permanent impairment of the left lower extremity based on knee weakness and loss of extension. The period of the award was November 10, 1996 to July 9, 1997.

On July 22, 1997 appellant filed a claim asserting that she sustained a recurrence of disability causally related to her November 2, 1991 employment injury. Her official superior

indicated that appellant stopped work on June 17, 1997. The Office advised appellant to submit additional information to support her claim, including a narrative medical report from her physician providing an opinion, with supporting explanation, as to the causal relationship between appellant's current disability and the original injury.

Medical evidence previously submitted showed that on December 13, 1995 appellant had full range of motion, had no pain under the patella but complained of increasing discomfort. On January 29, 1996 she complained of occasional discomfort toward the end of the day but was discharged from active care. On July 1, 1997 appellant's attending physician, Dr. Robert A. Smith, an orthopedic surgeon, reported that appellant continued to have problems with her knee, that she had pain and intermittent swelling and giving way episodes. His impression was the she had traumatic chondromalacia patella and a possible internal derangement. He noted that appellant's knee bothered her to the point that she recently had to take off some days from work and that she also had difficulty with prolonged standing and walking.

In a decision dated November 12, 1997, the Office denied appellant's claim of recurrence on the grounds that the medical evidence failed to support a worsening of appellant's accepted condition.

Appellant requested reconsideration. The Office subsequently received a number of progress reports, most of which predated appellant's claimed recurrence of June 17, 1997 and were previously submitted. The Office received three new progress reports from Dr. Smith, but in none of these reports did he express an opinion on whether appellant's disability for work beginning on or about June 17, 1997 was causally related to her employment injury of November 2, 1991. Instead, these notes indicated that appellant twisted her right ankle on August 8, 1997 while walking up stairs at the Longworth Building. The record indicates that the Office accepted this injury under a different claim number (OWCP File No. A25-512547).

In a decision dated February 11, 1998, the Office denied appellant's request for reconsideration on the grounds that her request failed to meet at least one of the requirements to obtain a merit review of her case.

The Board finds that the medical evidence of record fails to establish that appellant sustained a recurrence of disability on or about June 17, 1997 that was causally related to her November 2, 1991 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

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

Appellant furnished no such report. The medical evidence of record supports that by December 1995 appellant was complaining of increasing discomfort or at least occasional discomfort toward the end of the day. By July 1997 she was experiencing pain, intermittent swelling and giving way episodes, was having difficulty with prolonged standing and walking, and was taking off some days from work. While this evidence may be consistent with appellant's claim, none of the medical evidence provides Dr. Smith's reasoned opinion explaining whether appellant's disability for work on or about June 17, 1997 was causally related to the injury she sustained on November 2, 1991. Without this critical evidence, appellant has not met her burden of proof. Accordingly, the Board will affirm the Office's November 12, 1997 decision denying her claim of recurrence.

The Board also finds that the Office properly denied appellant's January 6, 1998 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) 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

Appellant's request for reconsideration did not show that the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or a fact not previously considered by the Office. Accordingly, appellant may not obtain a merit review of her claim based on the first or second requirement set forth above.

Instead, appellant submitted numerous progress reports. Most of these reports, however, predated appellant's claimed recurrence of July 17, 1997 and therefore did not address whether appellant's disability on or about July 17, 1997 was causally related to her November 2, 1991 employment injury. Further, most of this evidence was previously submitted to the record and was therefore not new. Appellant submitted three new progress reports, but these reports related to a different injury, one that appellant apparently sustained on August 8, 1997 while walking up stairs at the Longworth Building. The Board has held that evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.⁴ The Board has also held that evidence does not address the particular issue involved also constitutes no basis for reopening a case.⁵ Accordingly, appellant may not obtain a merit review of her claim under the third requirement above.

² 20 C.F.R. § 10.138(b)(1).

³ *Id.* at § 10.138(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁵ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Because appellant's January 6, 1998 request for reconsideration did not meet at least one of the three requirements for obtaining a merit review of her claim, the Board will affirm the Office's February 11, 1998 decision denying her request.

The February 11, 1998 and November 12, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
October 22, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member