U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOBIE A. CHASE and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, OH

Docket No. 97-1919; Submitted on the Record;
Issued September 2, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of total disability on June 28, 1994 causally related to her accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on April 16, 1997.

On August 30, 1992 appellant, then a 31-year-old mail processor, filed a claim for a traumatic injury, alleging that she injured her lower back on August 29, 1992 in the course of her federal employment. On October 1, 1992 the Office accepted appellant's claim for an acute lumbar strain and paid appellant continuation of pay from August 30 to October 13, 1992.

By decision dated December 30, 1992, the Office ordered that the claim be denied because the evidence failed to demonstrate a causal relationship between the injury and continuing disability.

By decision dated March 10, 1993, the Office reviewed the merits of the claim and denied modification of the prior decision.

Appellant subsequently appealed to the Board. The Board reversed the decisions of the Office dated March 10, 1993 and December 29, 1992.[1] Appellant subsequently returned to limited duty in 1994 and her compensation was paid accordingly.

On December 9, 1994 appellant filed a notice of recurrence of disability alleging that she reinjured her back on June 28, 1994. She indicated that on the last date she worked, July 1, 1994, she had extreme difficulty with her back and that it had never gotten better since the initial injury.

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[1] *See Toby Chase*, Docket No. 93-1241 (September 2, 1994) (unpub.).

Dan Schmidt, appellant's supervisor, subsequently provided a letter indicating that on the last day appellant worked she called him and stated that she was involved in a car accident which messed up her neck and back. A police report indicated that appellant was involved in an accident on July 10, 1994.

Appellant indicated that she was involved in a car accident on July 10, 1994, but that she had already stopped working on June 28, 1994 due to a recurrence of her previous injury.

On December 22, 1994 a physician signing illegibly diagnosed acute back strain, lumbar. She checked "yes" to indicate that appellant's present condition was due to the injury for which compensation was claimed and indicated that appellant was totally disabled.

On February 3, 1995 Dr. Harold C. Stratton, appellant's treating physician and a general practitioner, diagnosed an acute back strain, lumbar. He checked "yes" to indicate that the present condition was related to the injury for which compensation was claimed and indicated that appellant was totally disabled. Dr. Stratton stated that appellant suffered severe back and neck pain and that appellant was treated with a cervical collar. He stated that the permanent effects included chronic low back pain, cervical pain and shoulder pain.

On March 14, 1995 Dr. Stratton diagnosed severe lumbosacral sprain, severe myofascial inflammation of the lower back and depression. Dr. Stratton reviewed the history of appellant's original injury and noted that appellant continued to suffer back pain from the date of that injury to the present time. He stated that appellant returned to work on restricted duty in September 1993, but that she had to take off due to an exacerbation of back pain. Dr. Stratton further stated that appellant was involved in an automobile accident on July 10, 1994 and she had an exacerbation of her low back pain and a severe cervical strain. Dr. Stratton concluded that appellant was injured long before the automobile accident.

By decision dated March 16, 1995, the Office denied appellant's claim because the evidence failed to demonstrate a causal relationship between the accepted August 29, 1992 injury and the claimed loss of wages.

On July 17, 1995 the Office vacated its March 16, 1995 decision because appellant's representative was not sent a copy of the previous decision.

By decision dated July 17, 1995, the Office denied appellant's claim because the evidence failed to demonstrate a causal relationship between the claimed recurrence of disability beginning on June 28, 1994 and the accepted August 29, 1992 injury.

On July 28, 1995 appellant requested a hearing.

On November 7, 1995 Dr. Stratton noted that following appellant's initial injury on August 29, 1992 appellant continued to have severe, persistent back pain in the lumbosacral area which limited any activity. He stated that this condition resulted in depression. Dr. Stratton noted that a magnetic resonance imaging performed on September 6, 1995 by Dr. Robert L. Tyrell, a Board-certified radiologist, showed a prominent bulging annulus at L5-S1. He stated that appellant has not responded to treatment. Dr. Stratton diagnosed lumbosacral strain, a

bulging disc at L5-S1 and severe depression secondary to constant pain. On November 10, 1995 Dr. Stratton diagnosed acute back strain, lumbar and checked "yes" to indicate that the present condition was due to the injury for which compensation was claimed. He again indicated that appellant was totally disabled.

Appellant's hearing was held on March 12, 1996. She did not testify at the hearing.

By decision dated May 3, 1996, the Office hearing representative found that the evidence failed to establish that appellant was totally disabled beginning June 28, 1994 as a result of her August 29, 1992 accepted injury. The hearing representative stated that the record failed to contain a reasoned explanation of what, if any, material change occurred in the nature of claimant's injury-related back condition so that she was totally disabled from working her light-duty position.

On March 19, 1997 appellant requested reconsideration. In support, appellant only submitted a medical report from Dr. Ieva Veveris, a psychiatrist, addressing appellant's emotional state. Dr. Veveris diagnosed major, recurrent depression and somatoform disorder. She related these conditions to the poor treatment appellant received from the Office in handling appellant's claim. Dr. Veveris indicated that she did not address appellant's back problems.

By decision dated April 16, 1997, the Office denied the request for review because the evidence submitted in support of the application was irrelevant and immaterial.

The Board initially finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on June 28, 1994 causally related to an employment injury or any other factor of employment.

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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

The record indicates that appellant returned to limited duty in 1994. On December 9, 1994 appellant filed a claim alleging that she was totally disabled from June 28, 1994. She attributed her claimed disability to her August 29, 1992 employment-related back injury.

There is no evidence of record establishing any change in the nature or extent of appellant's permanent light-duty position, which began in 1994, as a cause of appellant's claimed disability on June 28, 1994.

[2] *See Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The medical evidence is also insufficient to establish that appellant was disabled from her light-duty position due to a change in the nature or extent of her accepted back injuries.

In support of her claim for a recurrence of disability, appellant submitted a December 22, 1994 report from a physician signing illegibly who stated that appellant was totally disabled and merely checked "yes" to indicate that appellant's present condition was due to the injury for which compensation was claimed. Because this report failed to provide any medical rationale explaining how appellant's problems and claimed total disability were related to her accepted back injury, it is insufficient to establish appellant's claim.[3] Similarly, Dr. Stratton, appellant's treating physician and a general practitioner, failed to provide any explanation for his conclusion that appellant's present disability related to her previous employment injury in his reports dated February 3, March 14, November 7 and November 10, 1995. On February 3 and November 10, 1995. Dr. Stratton merely checked "yes" to indicate that appellant's present condition was due to the injury claimed and that she was totally disabled. On March 14, 1995 Dr. Stratton only stated that appellant had to take off work due to an exacerbation of pain. Finally, on November 7, 1995, Dr. Stratton only noted that appellant had persistent pain following the August 29, 1992 injury prior to diagnosing a lumbosacral strain, a bulging disc at L5-S1 and severe depression. Because Dr. Stratton failed to provide any medical explanation for his conclusion that appellant was totally disabled due to her previously accepted injuries, his opinions are entitled to little weight.[4] Appellant, therefore, failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injuries or any other factors of her employment.

The Board also finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on April 16, 1997.

Under section 8128(a) of the Federal Employees' Compensation Act,[5] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in

[3] *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 unsupported by medical rationale).

[4] *Id.*

[5] 5 U.S.C. § 8128(a).

accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,[6] which provides that a claimant may obtain review of the merits of the claim by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(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) 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.[7]

In the instant case, appellant's request for reconsideration rests entirely on the February 13, 1997 report of Dr. Veveris, a psychiatrist. Dr. Veveris' report, however, fails to address appellant's back condition which was the basis for appellant's filing a claim for a recurrence of disability. Inasmuch as Dr. Veveris' report fails to address appellant's back condition, it is not relevant to this claim. Moreover, because appellant has failed to submit any new, relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits.

The decisions of the Office of Workers' Compensation Programs dated May 3 and April 16, 1997 are affirmed.

Dated, Washington, D.C.
September 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[6] 20 C.F.R. § 10.138(b)(1).

[7] 20 C.F.R. § 10.138(b)(2).