U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MITZIE S. KETNER and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

Docket No. 97-2843; Submitted on the Record;
Issued January 11, 2000

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying payment for the drugs Prozac and Fluoromethane Spray; (2) whether appellant has established that her fibromyalgia condition was causally related to her October 7, 1991 employment injury; and (3) whether the Office abused its discretion in denying merit review of its January 30, 1997 decision denying payment for Prozac and Fluoromethane Spray.

The Office accepted that on October 7, 1991, appellant, then a 34-year-old rural carrier, sustained cervical strain and a herniated nucleus pulposus (HNP) C5-6 disc when she fell on a hamper in the performance of duty. Appellant returned to work but underwent a cervical laminectomy on January 26, 1996 and was off work thereafter. On September 17, 1996 appellant's treating physician, Dr. Patrick Box, Board-certified in internal medicine and rheumatology, referred appellant to Dr. Glenn A. McCain, Board-certified in internal medicine specializing in rheumatology and pain management, for treatment of refractory fibromyalgia. By form report dated November 22, 1996, Dr. McCain diagnosed fibromyalgia -- chronic pain and checked "yes" to the form question of whether appellant's present condition was due to the injury for which compensation was claimed.

By letter to appellant dated January 13, 1997, Dr. McCain advised that he was prescribing Prozac and Fluoromethane Spray for treatment of appellant's "chronic pain." Dr. McCain noted that the Prozac was being prescribed for pain and not for psychological reasons.

On January 29, 1997 the Office medical adviser noted that Fluoromethane Spray was used as a topical anesthetic for management of myofascial pain, restricted motion and muscle spasm, that Prozac was distinctly for depression with no indication whatsoever for use in chronic pain and that the medical literature failed to support that either drug would be appropriate or useful for the treatment of an HNP at C5-6. The medical adviser further noted that appellant's

accepted conditions were cervical strain and an HNP at C5-6 and did not include fibromyalgia, for which Dr. McCain was prescribing these drugs.

By decision dated January 30, 1997, the Office denied payment for Prozac and Fluoromethane Spray finding that the evidence of record failed to establish that these drugs were indicated for the treatment of an HNP at C5-6. The Office noted that the Office medical adviser had concluded that neither drug would be appropriate for the treatment of appellant's accepted conditions and that Dr. McCain had prescribed them for treatment of chronic pain associated with fibromyalgia, an unaccepted condition.

By letter dated February 4, 1997, the employing establishment human resources specialist advised the Office that appellant was continuing to receive treatment for a condition that was not accepted which was noted to be fibromyalgia syndrome. The employing establishment requested that the Office advise it if this condition qualified for benefits under the Federal Employees' Compensation Act.

Another Form CA-20a attending physician's supplemental report from Dr. McCain was submitted in which he described appellant's present condition as fibromyalgia -- chronic pain and checked "yes" to the question of whether appellant's present condition was due to the injury for which compensation was claimed.

By decision dated April 18, 1997, the Office rejected appellant's claim for fibromyalgia finding that the medical evidence of record was not sufficient to establish that her fibromyalgia condition and disability for work on and after December 7, 1996 was causally related to the October 7, 1991 work injury. The Office found that none of the medical evidence contained a rationalized medical opinion establishing causal relation between the fibromyalgia and the 1991 cervical strain and HNP at C5-6.

On April 25, 1997 the Office received a note from Dr. McCain which stated, "Disability during December 7, 1996 through January 1, 1997 was due to fibromyalgia. The fibromyalgia was related to the original injury and January 2 to 10, 1997.

By letter dated April 29, 1997, appellant requested reconsideration and attached a copy of the January 30, 1997 decision. In support of her request, appellant submitted multiple articles from medical publications regarding the use of different antidepressant drugs in a variety of conditions. On May 1, 1997 the Office also received a medical narrative from Dr. McCain which stated, "I feel her present condition of fibromyalgia is directly related to her original injury.... If she had not had the injury to her neck she would not have developed her fibromyalgia."

By decision dated May 23, 1997, the Office denied appellant's application for a merit review finding that the evidence submitted in support was not sufficient to warrant review. The Office noted that excerpts from publications are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions were the result of an employee's federal employment.

The Board finds that the Office did not abuse its discretion in denying payment for the drugs Prozac and Fluoromethane Spray.

Section 8103 of the Act[1] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of any disability, or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital, or at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may also be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.[2] However, in order to be entitled to reimbursement of medical expenses, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[3]

In this case, the drugs for which appellant was seeking payment were prescribed to treat fibromyalgia, a condition not accepted by the Office as being causally related to her October 7, 1991 injury, or to the accepted conditions of cervical strain or HNP at C5-6. Further, the Office medical adviser opined that neither of these drugs were indicated in the current medical literature as being considered in the treatment of appellant's accepted conditions of cervical strain and HNP at C5-6. Appellant submitted no rationalized medical evidence establishing that appellant developed fibromyalgia as a result of her 1991 injury or the accepted conditions of cervical strain and HNP at C5-6. The only medical evidence submitted supporting such a causal relationship were the attending physician's form reports wherein the prescribing physician, Dr. McCain checked "yes" to the question of causal relation, but provided no further rationale or explanation to support his opinion. The Board has frequently explained that such a report has little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the employment-related injury.[4] Consequently, Dr. McCain's form reports are insufficient to establish that appellant's diagnosed fibromyalgia was causally related to her cervical strain and HNP at C5-6 in 1991.

As the Office has broad administrative discretion in choosing means to achieve an employee's recovery to the fullest extent possible in the shortest amount of time, the only limitation on the Office's authority is that of reasonableness.[5] As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of

[1] 5 U.S.C. §§ 8101-8193.

[2] *Linda Holbrook*, 38 ECAB 229 (1986); 5 U.S.C. § 8103(a); 20 C.F.R. § 10.401(a).

[3] *Bertha L. Arnold*, 38 ECAB 282 (1986); *Delores May Pearson*, 34 ECAB 995 (1983); *Zane H. Cassell*, 32 ECAB 1537 (1981); *John R. Benton*, 15 ECAB 48 (1963).

[4] *See Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[5] *Janice Kirby*, 47 ECAB 220 (1995); *Joe F. Williamson*, 36 ECAB 494 (1985).

manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[6]

No such abuse has been demonstrated in this case.

The Board further finds that appellant has failed to establish that her fibromyalgia condition is causally related to her October 7, 1991 employment injuries.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury or condition claimed was caused or aggravated by his or her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his or her federal employment.[7] Causal relationship is a medical issue that can be established only by medical evidence.[8] The Board also notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.[9]

In this case the medical evidence submitted by appellant did not establish by rationalized medical opinion that fibromyalgia was causally related to her October 7, 1991 injuries. The medical evidence submitted by appellant consisted of several attending physician form reports wherein Dr. McCain checked "yes," without any explanation or further supporting rationale, that her fibromyalgia was related to the 1991 injuries. As noted above, reports merely consisting of a check "yes" are of little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the employment-related injury.[10] These reports, therefore, are insufficient to establish appellant's claim.

Dr. McCain also submitted two brief statements concluding that the fibromyalgia was related for the reason that if appellant had not had the accident, she would not have the fibromyalgia. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.[11] Further, the Board has held that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relation.[12] As Dr. Clements' report were conclusory and simply attributed appellant's fibromyalgia to the injuries because without the

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[6] *Daniel J. Perea,* 42 ECAB 214 (1990).

[7] *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

[8] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[9] *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

[10] *See Lillian M. Jones*, *supra* note 4.

[11] *William C. Thomas*, 45 ECAB 591 (1994).

[12] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

injury she was and would not have been symptomatic, without any supporting rationale, they are of greatly diminished probative value and are insufficient to establish appellant's claim.

The Board additionally 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,[13] 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.[14] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.[15] When a claimant fails to meet one of the above-mentioned 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.[16]

By letter dated April 29, 1997, appellant requested reconsideration of the January 30, 1997 decision denying her prescribed medications. In support of the request appellant submitted general medical information and articles from medical publications. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[17] Therefore, these submissions are insufficient to constitute a basis for reopening a case for further consideration of the merits.

Further submitted were two reports from Dr. McCain which repeated his conclusory opinion from his previous reports and lacked any supporting rationale as did his previous reports. Therefore, these reports were substantially similar to reports previously of record. The Board has ruled that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[18] Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its May 23, 1997 decision by denying her request for a review on the merits of its January 30,

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[13] 5 U.S.C. §§ 8101-8193.

[14] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[15] 20 C.F.R. § 10.138(b)(2).

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

[17] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

[18] *Jerome Ginsberg*, 32 ECAB 31 (1980).

1997 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, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[19] Appellant has made no such showing here.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 30, April 18 and May 23, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 11, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[19] *Daniel J. Perea*, *supra* note 6.