

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSANNA JACOME and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

*Docket No. 99-601; Submitted on the Record;
Issued July 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after October 9, 1997 causally related to her April 8, 1997 employment injury; and (2) whether the Office of Workers' Compensation Programs, by its September 1, 1998 decision, properly declined to reopen appellant's case for further merit review.

On April 14, 1997 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 1997 she sustained an injury in the form of "strained and pulled right nerves and muscles" in her neck and back. She alleged that she pulled muscles on her right side "from neck to lower back" while bending to retrieve a parcel from a push cart. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care from Dr. Edward J. Lackner, a general practitioner, on April 14, 1997. She did not stop work.

In support of her claim, appellant submitted a report from Dr. Lackner dated April 14, 1997. In his report, he noted that appellant was injured on April 4, 1997 when she bent to retrieve mail from a bag while holding flats and letters in her left hand. Dr. Lackner further noted that appellant did not notify the employing establishment until April 12, 1997 because she believed the injury was "minor and would pass." He stated that his examination of appellant revealed unlimited but slightly painful range of motion of the cervical spine and shoulder, tenderness over the left sacroiliac spine and he diagnosed right thoracic and sacroiliac sprains. Dr. Lackner also noted that appellant sustained a previous back injury and that her treatment for that injury ended in May 1995.

Appellant also submitted three duty status reports signed by Dr. Lackner (Form CA-17). The report dated April 14, 1997 restricted appellant to eight-hour shifts and diagnosed "[sacroiliac and thoracic] sprain." The reports dated October 9 and November 19, 1997 also

restricted appellant to eight-hour shifts, noted right sacroiliac, thoracic sprains and tenderness and spasms.

The record shows that the Office accepted appellant's claim for thoracic and sacroiliac sprains and paid appropriate compensation benefits.

On December 9, 1997 appellant filed a notice of recurrence of disability claim (Form CA-2a) alleging injuries to her back, right shoulder, neck and side. On the claim form, appellant stated: "Present condition is the same as injury on April 8, 1997. Dr. Lackner never released me. This is not a recurrence. I have the same injuries, the same pain till (sic) this day of November 10, 1997." By letter dated December 2, 1997, appellant expounded on the contents of her claim form and again denied that her conditions were a recurrence of her April 8, 1997 employment injury.

By letter dated December 11, 1997, the Office informed appellant that essential information regarding her injury was not included on her CA-2a form. The Office requested additional information from appellant, including detailed descriptions of her work duties and condition, and a narrative report from her physician. The Office allowed 30 days for appellant to respond to its request.

By letter dated December 23, 1997, appellant submitted a detailed narrative statement of her work duties and condition. She stated that she cased mail two to five hours daily, bent to lift parcels, flats of mail and delivered mail and parcels on her route. Appellant further stated that she drove and walked her delivery route. She noted that she experienced daily pain in her right shoulder, neck and the right side of her back. Appellant denied sustaining other injuries between her April 8, 1997 employment injury and the present. She related her present condition to her April 8, 1997 employment injury "because [the April 8, 1997] injuries never went away."

By decision dated January 14, 1998, the Office disallowed appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between her April 8, 1997 employment injury and her alleged recurrence of disability. The Office found that Dr. Lackner's report, dated April 14, 1997, was insufficient to establish causal relationship because it did not address appellant's recent medical condition and was not contemporaneous with the alleged recurrence of disability.

By letter dated January 20, 1998, appellant requested reconsideration of the Office's January 14, 1998 decision denying her claim. In support of her request for reconsideration, appellant submitted a report by Dr. Lackner dated December 21, 1997. In his report, Dr. Lackner stated that appellant's April 8, 1997 injuries were to the upper and lower back and neck. He further noted that appellant sustained three "industrial" injuries and one injury unrelated to her

federal employment to her neck and back prior to her April 8, 1997 employment-related injury.¹ Dr. Lackner noted that the latter injury was the most “severely disabling.”

By decision dated February 10, 1998, the Office denied appellant’s request for reconsideration on the grounds that Dr. Lackner’s December 21, 1997 report was insufficient to warrant modification of its January 14, 1998 decision. The Office found that the report did not address appellant’s current medical condition or provide a reasoned medical opinion relating appellant’s condition to her April 8, 1997 employment injury.

By letter dated April 4, 1998, appellant requested reconsideration of her claim. In her letter, appellant stated that she previously misunderstood the meaning of recurrence and that she did, in fact, sustain a recurrence of disability on October 9, 1997. She alleged that, because she was not notified of a decision regarding her April 8, 1997 employment injury, she did not continue medical treatment, as her insurance would not cover such expenses without Office approval. Appellant further noted that she did not seek medical treatment because she could manage an eight-hour day and that she sustained a recurrence of disability when she was required to work overtime.

In support of her request for reconsideration, appellant submitted numerous reports from Dr. Lackner dated June 5, 1990 to March 21, 1998. Dr. Lackner’s June 5, 1990 report addressed appellant’s September 15, 1988 neck, shoulder and lower back injuries.² He noted that appellant sustained similar injuries in an April 1983 automobile accident and an employment-related injury in December 1986 in the form of lumbar, thoracic and cervical sprains. Dr. Lackner’s October 24, 1991 report discussed appellant’s April 23, 1990 injury. In his October 25, 1991 report, he discussed appellant’s April 23, 1990 injury and a September 9, 1991 recurrence of that injury. In his report dated August 24, 1994, Dr. Lackner discussed appellant’s August 17, 1994 injury. In that report, he diagnosed an inguinal ligament strain sustained while appellant worked her route. Dr. Lackner opined that the injury was “industrially related, as most of her route requires walking and mounting and dismounting from her jeep.” He further opined that such requirements could cause or aggravate a groin pull by over stretching the inguinal ligament. Dr. Lackner’s May 28, 1995 report stated that appellant sustained an injury on August 16, 1994. He stated that appellant’s injury was “new,” not a recurrence of past injuries. Dr. Lackner further stated that appellant’s condition was temporary and that although she had fully recovered, the potential for reinjury existed. In a report dated March 21, 1998, he referred to his previous reports dated April 14, November 10 and December 18, 1997. Dr. Lackner opined that appellant’s April 8, 1997 employment injury was sustained when she bent to remove mail from a bag with one hand while holding flats with her other hand during the second of two consecutive 10-hour shifts. He stated that “[t]herefore, there was a causal relationship.” Dr. Lackner enclosed copies of reports previously submitted by appellant.

¹ Dr. Lackner stated that appellant’s previous “industrial” neck and back injuries were sustained in December 1996 (cervical, thoracic and lumbar strains), September 1998 (lumbar and sacroiliac sprains), April 1990 (probable herniated lumbar nucleus pulposes, right shoulder sprain and sacroiliac spine sprain). He noted that appellant also sustained an injury in August 1994 that was not work related.

² OWCP No. A13-1052336.

Additionally, appellant submitted duty status reports signed by Dr. Lackner dated December 15, 1997, February 26, March 19 and May 18, 1998. On the December 15, 1997 report he diagnosed a right shoulder sprain. Dr. Lackner also noted lumbar, thoracic and sacroiliac sprains. He restricted appellant to eight-hour shifts with five-minute breaks and hand cart use as needed. Dr. Lackner also restricted other work activities. On the February 26, 1998 form he diagnosed thoracic and lumbar sprains, and noted clinical findings that are illegible. Dr. Lackner's restrictions on appellant's work activities were the same as those noted on the previous duty status report form. He indicated that he advised appellant on February 26, 1998 that she was able to resume work. On the report forms dated March 19 and May 18, 1998 Dr. Lackner diagnosed thoracic, lumbar and cervical sprains and noted identical restrictions on appellant's work activities to those in previous reports, adding that she never stopped working.

By decision dated September 1, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted to support her request was repetitious and insufficient to warrant further review.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on October 9, 1997 in the form of neck, shoulder and back conditions causally related to her April 8, 1997 employment injury.

The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.³ Such proof must include a report from the employee's attending physician addressing dates of examination and treatment, history given by the employee; findings; results of x-ray and laboratory tests; diagnosis; course of treatment; the physician's opinion, with medical reasons, regarding causal relationship between the employee's condition and the original injury.

In the present case, the Office accepted thoracic and sacroiliac sprains as employment-related injuries sustained on April 8, 1997. Therefore, the remaining issue is whether appellant's alleged recurrence of disability beginning October 9, 1997 resulted from her April 8, 1997 employment injury.

Dr. Lackner's reports dated June 5, 1990 to March 21, 1998 addressed appellant's previous injuries but did not address her October 9, 1997 alleged recurrence of disability. The doctor did not adequately discuss examinations and treatment, findings, test results, diagnosis and course of treatment after October 9, 1997, the date of appellant's alleged recurrence of disability. Moreover, Dr. Lackner did not provide a rationalized medical opinion regarding the issue of whether appellant's alleged recurrence of disability related to her April 8, 1997 employment injury. In his most recent report dated March 21, 1998, he mainly referred to previous notes and reports. Dr. Lackner opined that appellant's "chronic musculoskeletal problems" related to the fact that she weighed only 105 pounds, suffered from lumbar disc disease and could tolerate only limited lifting, stooping and bending. He further stated:

³ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

“[Appellant’s] injuries occurred after the second of two consecutive 10-hour shifts. Overtime work had been prohibited by myself, as had been stated a number of times on notices to her superiors prior to her injuries. Apparently, her superiors did not consider this when they ordered the overtime. Thus, her back was already stressed when she bent down to extract mail from the bag on the push cart while holding ‘flats’ with the other hand. This act resulted in the sprains. Therefore, there was a causal relationship.”

Thus, Dr. Lackner’s report focused on the causal relationship between the employment activities and appellant’s accepted conditions, but it did not address whether there was a causal relationship between appellant’s April 8, 1997 employment injury and her October 9, 1997 alleged recurrence of disability.

The duty status reports dated April 14, 1997 to May 18, 1998, established that appellant was restricted to working eight-hour shifts and from performing certain activities. However, the reports did not address the issue of whether there was a causal relationship between appellant’s April 9, 1997 employment injury and her October 9, 1997 alleged recurrence of disability.

The Board further finds that the Office, by its September 1, 1998 decision, properly declined to reopen appellant’s case for further merit review.

In order to warrant a grant of a claimant’s reconsideration request, the claimant must show that the Office erroneously applied or interpreted a point of law, advance a new legal argument supporting her claim not previously considered by the Office, or submit new and relevant evidence not previously considered by the Office.⁴ Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for further merit review.⁵ Section 10.138(b)(2) of the Office’s regulations provides that when an application for review of the merits of a claim does not meet at least one of those requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶ The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office does not constitute a basis for reopening a case for further review on the merits.⁷

In its September 1, 1998 decision denying appellant’s request for reconsideration, the Office acknowledged appellant’s submission of reports from Dr. Lackner, dated June 5, 1990 to March 21, 1998, but found that they were insufficient to warrant revision of its February 10, 1998 decision. The Office properly found that his reports failed to address the threshold issue of whether appellant’s alleged recurrence of disability commencing October 9, 1997 was causally related to her April 8, 1997 employment injury and, therefore, were irrelevant. Additionally,

⁴ *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.138(b)(1).

⁵ *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *David E. Newman*, 48 ECAB 305, 308 (1997); see *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Dr. Lackner's March 21, 1998 report was repetitious. That report incorporated portions of Dr. Lackner's December 21, 1997 report, which was previously submitted and considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated September 10, February 10 and January 18, 1998 are affirmed.

Dated, Washington, D.C.
July 5, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member