U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN J. BLASZKOWIAK and U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY

Docket No. 99-983; Submitted on the Record;
Issued July 12, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden to establish that she sustained recurrences of disability on January 7 and April 14, 1997; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On January 7, 1997 appellant, a 37-year-old mailhandler, filed a claim for benefits, alleging that she had sustained a cervical condition caused by engaging in repetitive motion tasks while hooking up hampers. She stated that she became aware of this condition on October 29, 1996 and that she initially sought treatment for this condition on December 11, 1996. In a Form CA-7 dated March 15, 1997, appellant claimed compensation from December 12 through December 19, 1996 and from January 7 through February 21, 1997. The Office accepted her claim for cervical radiculopathy and issued payment for leave buy-back for the period from December 14 through December 18, 1996.

Appellant's treating physician, Dr. Clementina J. Lewis, released appellant to return to work on light duty, with limitations on lifting more than 15 pounds, on March 6, 1997.[1] The employing establishment offered appellant a light-duty job as a modified mailhandler based on the job requirements outlined by Dr. Lewis, which appellant accepted on March 25, 1997.

Appellant went off work again, allegedly due to her cervical condition from April 14 until May 6, 1997. She ultimately returned to work on light duty with her previous restrictions on May 6, 1997.

On June 24, 1997 appellant filed two CA-2a forms claiming that she sustained a recurrence of disability from January 7 through February 22, 1997 and from April 14 through

[1] Appellant indicated in a Form CA-2a dated July 7, 1997 that she began working limited duty under these restrictions as of December 12, 1996.

May 6, 1997.[2] In support of her claim, she submitted various treatment notes, physical therapy reports, form reports and a July 18, 1997 report from Dr. Naren Kansal, a Board-certified neurosurgeon, who had treated appellant for her cervical condition since February 1997 stated:

> "[Appellant] continues to have similar problems and like I discussed with her before, there is not a whole lot I can come up with to help her with this problem. Perhaps she will just need to learn to live with this problem or maybe, you can consider sending her to an [orthopedic physician] for possible evaluation of the shoulder, etc. At least from the neck standpoint, we know there is nothing else that I can advise for [appellant]. The [magnetic resonance imaging] MRI [scan] is completely negative from the right side standpoint. As long as things are stable, at this point I am discharging her from my direct care…."

By letter dated August 1, 1997, the Office advised appellant that it required additional medical evidence, including a medical report, to support her claim that she sustained recurrences of her work-related disability on January 7 and April 14, 1997. The Office also requested that she submit a factual statement explaining the circumstances of her alleged recurrences and specifically asked appellant to provide evidence supporting the fact that there had been a change in the requirements of her light-duty job or a change in her physical condition. The Office stated that appellant had 30 days in which to submit the requested information. She did not respond to this letter within 30 days.

By decision dated September 30, 1997, the Office denied appellant's claim for recurrences of disability on January 7 and April 14, 1997.

By letter dated December 12, 1997, appellant's representative requested reconsideration. In support of her claim, appellant submitted a November 20, 1997 report from Dr. Lewis. She reviewed the history of injury, restated her physical restrictions and physical findings and noted that appellant's pain was lessened on her off days. Dr. Lewis stated that she advised appellant, upon the alleged recurrences on January 7 and April 14, 1997, that she should go on total disability to provide more rest so that her healing would not be compromised.

By decision dated March 11, 1998, the Office denied reconsideration, finding that appellant did not submit evidence sufficient to warrant modification.

By letter dated September 1, 1998, appellant's representative requested reconsideration. In support of her request, she submitted a July 3, 1998 report from Dr. Lewis, in which she restated her treatment notes from previous reports and essentially reiterated her earlier findings and conclusions. Dr. Lewis did add, however, that appellant underwent a computerized axial tomography (CAT) scan on December 20, 1996 which showed a possible herniated disc at C6-7, which Dr. Lewis felt could explain the type and location of the pain which occurred even while she was on light duty. Dr. Lewis opined that the repetitive nature of her work caused a

[2] Appellant filed another Form CA-2a claim for recurrence on July 8, 1997, alleging that she was unable to work due to her work-related cervical condition from June 24 until June 27, 1997. The Office stated that it would adjudicate this alleged recurrence in a separate claim.

recurrence of her disabling pain and that appellant related that on January 17, 1997 she was at work for only one hour when her pain allegedly prevented her from working. Dr. Lewis stated that, in light of this history, she kept appellant off work until February 7, 1997 to give the prescribed physical therapy sufficient time to work.

With respect to the alleged recurrence on April 14, 1997, Dr. Lewis stated that appellant underwent an emergency MRI scan and was examined by Dr. Kansal. Dr. Lewis stated that she examined appellant on April 24, 1997, at which time she related the cause of her pain to repetitive motion. Finally, Dr. Lewis advised that appellant should not be expected to reach above her head or pull with an abducted right arm due to an enervated muscle group involved at the site of pain, secondary to the injury at the cervical root. She concluded that appellant should remain on light duty within these restrictions.

By decision dated December 2, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability on January 7 and April 14, 1997.

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 a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[3]

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of January 7 and April 14, 1997 to her employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted consisted of the reports from Drs. Lewis and Kansal. These reports provided a history of injury and a diagnosis of the condition, indicated very generally that appellant complained of disabling pain on January 7 and April 14, 1997 and imposed physical restrictions on certain work activities, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's condition and disability as of January 7 and April 14, 1997 were causally related to her accepted cervical condition.

[3] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The reports from Drs. Lewis and Kansal do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged cervical condition and disability. Causal relationship must be established by rationalized medical opinion evidence. The opinions from Drs. Lewis and Kansal on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.[4] The reports in the record failed to provide an explanation in support of appellant's claim that she was totally disabled as of January 7 and April 14, 1997. Thus, the reports from Drs. Lewis and Kansal did not establish a worsening of appellant's condition and therefore did not constitute a probative, rationalized opinion demonstrating that a change occurred in the nature and extent of the injury-related condition.

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work on December 19, 1996 on light duty within the restrictions against lifting more than 15 pounds and there is nothing in the record indicating that the modified job as mailhandler ever required her to exceed these restrictions. Although appellant stopped working on January 7 and April 14, 1997, she has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her limited-duty assignment during the period claimed. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing his light-duty assignment on January 7 and April 14, 1997 as a result of her employment, appellant failed to meet her burden of proof. Thus, the Office properly found in its September 30, 1997 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of January 7 and April 14, 1997 were caused or aggravated by her employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability. The Board therefore affirms the Office's March 11, 1998 decision affirming the September 30, 1997 decision denying benefits based on a recurrence of her work-related disability.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[5] 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

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

[5] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

claim.[6] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[7]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted Dr. Lewis' July 3, 1998 report with her request for reconsideration, this report is cumulative and repetitive because it essentially reiterates previous medical reports which indicated that appellant's cervical symptoms as of January 7 and April 14, 1997 were causally related to her accepted cervical condition, all of which were rejected by the Office in previous decisions. Dr. Lewis' statements regarding diagnostic tests not previously mentioned and her expanded work restrictions do constitute new evidence, but they are not relevant because they have no probative value and are not sufficient to establish that the Office erred in finding appellant's alleged recurrences of January 7 and April 14, 1997 were not causally related to her accepted cervical condition. Thus, appellant's request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant sustained recurrences of her work-related disability on January 7 and April 14, 1997 -- was medical in nature. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions.

Additionally, the September 1, 1998 letter from appellant's representative did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she sustained recurrences of her work-related disability on January 7 and April 14, 1997, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's December 2, 1998 decision.

[6] 20 C.F.R. § 10.138(b)(2).

[7] *Howard A. Williams,* 45 ECAB 853 (1994).

The decisions of the Office of Workers' Compensation Programs dated December 2 and March 11, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 12, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member