

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIA S. BLACKMON and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 99-1501; Submitted on the Record;
Issued July 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to continuation of pay for the period of May 1 through May 7, 1998; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for a merit review on April 15, 1999.

On April 30, 1998 appellant, then a 54-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that she injured her back when a chair rolled out from under her and she fell in the performance of her federal employment. Appellant stopped working on May 1, 1998 and returned on May 8, 1998.

On April 30, 1998 an emergency room physician, signing illegibly, examined appellant and stated that she was able to return to work that same date or on May 1, 1998. The physician diagnosed a low back sprain.

On May 1, 1998 Dr. Elbert H. Cason, a Board-certified surgeon, also examined appellant and reported that she was able to return to work on that same date.

On May 13, 1998 Dr. Kathleen Brunts, a Board-certified internist, stated that she examined appellant on May 12, 1998 and that appellant had called on May 4, 1998 regarding her hemorrhoids. Dr. Brunts indicated that appellant was unable to work from May 4 through May 7, 1998 due to her hemorrhoids, which stemmed from her fall at work.

On May 27, 1998 the Office advised appellant of the medical evidence that she needed to submit to support her alleged disability from work, including a physician's rationalized opinion addressing why she was unable to perform her duties due to her low back sprain.

On May 28, 1998 the Office accepted that appellant sustained a low back sprain.

On October 29, 1998 the Office again informed appellant that she needed to submit a rationalized medical opinion evidence establishing that she was disabled for the period of May 1 through May 7, 1998 due to her accepted condition.

By decision dated February 17, 1999, the Office determined that appellant was not entitled to continuation of pay for the period of May 1 through May 7, 1998 inasmuch as the record failed to contain rationalized medical evidence supporting work-related total disability for that period.

In a letter received March 12, 1999, appellant requested reconsideration. Appellant stated that the muscle relaxing drug her physician prescribed to treat her accepted back injury caused her to have hemorrhoids, which resulted in her disability. Appellant also stated that she also missed work due to a diabetic condition that the muscle relaxing drug might have aggravated. She further suggested that her traumatic injury might have triggered the onset of her disabling diabetes. In this regard, appellant submitted a report from Dr. Brunts indicating that she treated appellant on May 12, 1998 for diabetes, which probably caused blurred vision and clouded thinking.

By decision dated April 15, 1999, the Office denied appellant's request for reconsideration because appellant failed to submit new and relevant evidence. The Office stated that appellant failed to submit a rationalized medical opinion, based on a physical examination, supporting total disability secondary to the effects of the accepted work injury.

The Board finds that appellant is not entitled to continuation of pay.

In order to establish entitlement to continuation of pay, appellant must establish, on the basis of reliable, probative and substantial evidence, that she was disabled as a result of a traumatic employment injury. As part of this burden she must furnish medical evidence from a qualified physician who, based on a complete and accurate history, concludes that appellant's disability is causally related to such injury.¹ Appellant has not met that burden. In this case, the only medical report, which appellant submitted that indicated that appellant was disabled for any part of the period of May 1 through May 7, 1998 was the May 13, 1998 brief note from Dr. Brunts, a Board-certified internist.² She stated only that appellant was disabled from May 4 through May 7, 1998 due to hemorrhoids stemming from her fall at work. Dr. Brunts' opinion is entitled to little weight as it is unexplained.³ Moreover, the Office has not accepted that appellant sustained hemorrhoids as a result of the April 30, 1998 employment injury. As the record does not contain any rationalized medical evidence establishing that appellant was disabled due to her employment injury for the period of May 1 through May 7, 1998, she is not entitled to continuation of pay.

¹ *Carol A. Dixon*, 43 ECAB 1065 (1992); *Virginia Mary Dunkle*, 34 ECAB 1305 (1983).

² Neither the April 30, 1998 report from the unknown emergency room physician nor the May 1, 1998 report from Dr. Cason, a Board-certified internist, conclude that appellant was disabled from May 1 through May 7, 1998,

³ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on April 15, 1999.

Under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁵ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that the Office erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁶

In support of her request for reconsideration received March 12, 1999, appellant urged that she was disabled for the period of May 1 through May 7, 1998 because the drugs she took to relieve her accepted back condition caused disabling hemorrhoids and diabetes. However, the Office previously denied appellant's claim on the basis that she failed to submit rationalized medical evidence supporting work-related disability for the period of May 1 through May 8, 1998. Appellant, therefore, need to submit relevant, rationalized medical evidence establishing employment-related disability for the period in question. The only medical evidence appellant submitted with her request for reconsideration was a brief note from Dr. Brunts stating that she treated appellant for diabetes on May 12, 1998 and that the diabetes probably caused blurred vision and clouded thinking. Because this medical report fails to address whether appellant was disabled for the period in question due to her employment injury, it is not relevant to appellant's claim. The Office, therefore, properly refused to reopen appellant's claim for a merit review.

⁴ 5 U.S.C § 8128(a).

⁵ 20 C.F.R. § 10.606(b) (1999).

⁶ 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated April 15 and February 17, 1999 are affirmed.

Dated, Washington, D.C.
July 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member