U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA D. VINSON and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

Docket No. 99-1519; Submitted on the Record;
Issued July 25, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability as of January 22, 1998 causally related to her accepted August 28, 1995 lower back injury; 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 under 5 U.S.C. § 8128(a).

On August 28, 1995 appellant, a 47-year-old window clerk, injured her back while lifting a heavy tub of flat mail. Appellant filed a claim for benefits on September 2, 1995, which the Office accepted for lower back strain. Appellant returned to light-duty work on September 1, 1995 and subsequently missed work for intermittent periods. The Office paid appropriate disability compensation for intermittent disability. Appellant accepted an offer from the employing establishment to return to work on light duty on April 8, 1998.

On February 10, 1998 appellant filed a Form CA-2 claim for benefits, alleging that she sustained a recurrence of disability on January 22, 1998, which was caused or aggravated by her August 28, 1995 employment injury.

By letter dated March 9, 1998, the Office advised appellant that it required additional factual and medical evidence, including a medical report to support her claim that her current condition/or disability as of January 22, 1998 was caused or aggravated by her accepted August 28, 1995 employment injury.

Appellant submitted a March 17, 1998 report from Dr. Steven M. Theiss, a Board-certified orthopedic surgeon, who stated that he had treated her for work-related thoracic pain on April 23, 1996 and had recently treated her again after she experienced an exacerbation of her symptoms in late January 1998. He diagnosed mechanical thoracic pain, removed her from work for four weeks and placed her in a rehabilitative physical therapy program. Dr. Theiss stated that appellant had progressed to the point where he believed she could return to work with restrictions on lifting and twisting. He opined that her current exacerbation was related to her

original injury. Appellant also submitted some treatment notes from Dr. Theiss from February 1998.

By decision dated July 13 1998, the Office denied appellant's recurrence of disability claim. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of January 22, 1998 was caused or aggravated by the August 28, 1995 employment injury.

In a letter received by the Office on July 27, 1998, appellant requested reconsideration of the July 13, 1998 decision. In support of her claim, appellant submitted a June 5, 1998 report from Dr. Theiss in which he verified that the physical therapy ordered for appellant was medically necessary for her condition and attached the prescription for said therapy.

By decision dated September 29, 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 sustained a recurrence of disability as of January 22, 1998 causally related to the August 28, 1995 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[1]

The record contains no such medical opinion. Appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates her disability for work as of January 22, 1998 to her August 28, 1995 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 appellant submitted was Dr. Theiss's February 1998 treatment notes and March 17, 1998 medical report, in which he diagnosed thoracic pain, related his history of treatment and physical therapy, outlined work restrictions and summarily stated that her current exacerbation was related to the "original" injury. Dr. Theiss's report, however, did not contain a probative, rationalized medical opinion explaining how appellant's disability commencing January 22, 1998 was causally related to her August 28, 1995 employment injury. As Dr. Theiss's reports were the only evidence appellant submitted in support of her claim for a recurrence of disability, appellant failed to provide a rationalized, probative medical opinion indicating that her current condition was caused or aggravated by the accepted August 28, 1995 employment injury.[2]

[1] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

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

As there is no probative, rationalized medical evidence addressing and explaining why the claimed condition and disability as of January 22, 1998 was caused or aggravated by her August 28, 1995 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of 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 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.[3] 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 claim.[4] 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.[5]

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. Theiss's June 5, 1998 report verifying that her medical condition required physical therapy, this report did not contain an opinion as to whether her current condition was causally related to the August 28, 1995 work injury, and was repetitive of his previous report and treatment notes. Thus, her 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 a condition and/or disability beginning January 22, 1998 caused or aggravated by her August 28, 1995 work injury -- was medical in nature. All of the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, appellant's July 27, 1998 letter did not show that 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 she had sustained a condition and/or disability as of January 22, 1998 causally related to her accepted August 28, 1995 employment injury, appellant 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 September 29 and July 13, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
July 25, 2000

[3] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.138(b)(2).

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member