

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HANEEFAH M. HANNIBAL and NATIONAL ARCHIVES & RECORDS
ADMINISTRATION, FEDERAL RECORDS CENTER, Philadelphia, PA

*Docket No. 98-2123; Submitted on the Record;
Issued June 15, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on or after October 28, 1997 causally related to her June 28, 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on April 10, 1998.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on or after October 28, 1997 causally related to her June 28, 1993 employment injury.

On July 6, 1993 appellant, then a 44-year-old archive aide, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 1993 she sustained a back injury when she got up from the floor where she had been seated performing her duties. Appellant stopped work on June 28, 1993. The Office accepted appellant's claim for low back strain. On April 11, 1997 appellant returned to light-duty work with the employing establishment as a holdings maintenance worker. In a decision dated June 11, 1997, the Office found that, since returning to work, appellant had demonstrated the ability to earn wages equal to or greater than those currently being paid for the job appellant held on the date of injury and, accordingly, terminated appellant's wage-loss compensation benefits. Appellant remained entitled to medical benefits.

On November 13, 1997 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on October 28, 1997 characterized by chronic low back pain and cramping. Appellant stopped work on October 31, 1997 and has not returned.

By decision dated March 11, 1998, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or after October 28, 1997 causally related to the June 28, 1993 employment injury.

In a letter dated March 23, 1998 and received by the Office on April 1, 1998, appellant requested reconsideration of the Office's decision.

By decision dated April 10, 1998, the Office found appellant's request for reconsideration to be insufficient to warrant further merit review of appellant's claim.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.¹ As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.²

In the present case, appellant has neither shown a change in the nature and extent of her injury-related condition nor a change in the nature and extent of the light-duty job requirements. In a December 1, 1997 narrative statement, submitted in response to a November 25, 1997 Office request for additional medical and factual evidence in support of her claim, appellant described her employment duties and described the circumstances of her claimed recurrence of disability. Appellant stated that her light-duty job required that she perform research and enter data into files both manually and using a computer. Appellant stated that since her original injury her back has always been painful, especially after sitting for long periods of time and that on October 28, 1997 while she was sitting working on the computer she experienced a cramping pain in her lower back, which traveled down her right leg and into her toes. She stated that this was the same pain level she had on June 28, 1993. Appellant did not submit any medical evidence in support of her claim for a recurrence of disability.

As the record does not establish, and appellant does not allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements and as appellant did not submit the requested supporting medical evidence, the Board finds that she has failed to discharge her burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on April 10, 1998.

¹ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² *Id.*

Under section 8128(a) of the Federal Employees' Compensation Act,³ 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 10.138(b)(1) of the implementing federal regulations,⁴ which provides that a claimant may obtain review of the merits of the claim by:

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

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

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

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁵

In her March 23, 1998 reconsideration request, received by the Office on April 1, 1998, appellant stated that she was requesting further review because her physician had not submitted a narrative medical report to support her claim. Appellant further stated that the medical evidence would be submitted as soon as possible, but at the time of the Office's decision, no additional evidence had been received. As appellant did not raise any arguments concerning the facts or law in this case and did not submit relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on April 10, 1998.⁶

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ Subsequent to the Office's April 10, 1998 decision denying merit review of appellant's claim, appellant submitted additional medical evidence. The Board is precluded from reviewing any evidence which was not before the Office at the time of the final decision on appeal; *see* 20 C.F.R. § 501.2(c). In addition, it appears from the record that on May 1, 1998 appellant filed a second claim for a recurrence of disability. By letter dated June 4, 1998, the Office acknowledged this claim, but determined from the information supplied on the claim form by appellant, that the claim was duplicative of the claim for recurrence filed on November 13, 1997. Accordingly, the Office deleted this second claim. The Board notes, however, that the text of both a subsequent letter to the Office and appellant's letter on appeal to the Board indicates that she is claiming a second recurrence of disability on March 26, 1998. As this claim has not been adjudicated by the Office, the Board cannot review this claim; *see Douglas E. Billings*, 41 ECAB 880 (1990).

The decisions of the Office of Workers' Compensation Programs dated April 10 and March 11, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 15, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member