

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN R. BEAUGRAND and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 98-2399; Submitted on the Record;
Issued June 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
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 August 5, 1998 due to her September 11, 1989 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 5, 1998 due to her September 11, 1989 employment injury.

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.¹

On September 11, 1989 appellant, then a 28-year-old letter carrier, sustained a right shoulder strain and right impingement syndrome due to casing mail at work on that date. Appellant briefly stopped work and returned to work in a light-duty position. Appellant claimed that she was entitled to a schedule award due to her right shoulder condition and, in a decision dated June 12, 1997, the Office denied her claim on the grounds that she did not submit

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

sufficient evidence in support thereof.² By decision dated July 16, 1998, the Office denied appellant's request for merit review of its June 12, 1997 decision.

Appellant later claimed that she sustained a recurrence of disability on or after August 5, 1998 due to her September 11, 1989 employment injury. By decision dated September 3, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related recurrence of disability.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after August 5, 1998 due to her September 11, 1989 employment injury. In support of her claim, appellant resubmitted various medical reports dated between 1989 and 1996. These documents are not sufficient to establish appellant's recurrence claim in that they do not address appellant's condition on or after August 5, 1998.³ Appellant has argued that the Office has failed to adequately consider her right arm neuropathy. The Board notes, however, that appellant's claim was accepted for right shoulder strain and right impingement syndrome and the evidence of record does not support the finding that appellant had an employment-related right arm neuropathy which caused disability on or after August 5, 1998. The record contains reports dated between 1989 and 1992 of Dr. Scott Reidler, an attending Board-certified neurologist, and Dr. Barry A. Rose, an attending Board-certified orthopedic surgeon, who suggested that appellant had employment-related thoracic outlet syndrome and right arm neuropathy. In reports dated in 1996 and 1997, Dr. Schiffman indicated that appellant had an employment-related right arm neuropathy. These reports, however, are of limited probative value in that they do not contain adequate medical rationale in support of their opinions regarding the cause of these nonaccepted medical conditions and do not contain an opinion on appellant's condition on or after August 5, 1998.⁴

For these reasons, appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 5, 1998 due to her September 11, 1989 employment injury.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

² The Office noted that the February 1997 evaluation of Dr. Jeffrey S. Schiffman, an attending Board-certified orthopedic surgeon, did not show that appellant was entitled to a schedule award for permanent impairment of her right arm. The Office's June 12, 1997 decision is not currently before the Board in that it was issued more than one year prior to the August 10, 1998 filing of the present appeal; *see* 20 C.F.R. § 501.3(d)(2).

³ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁴ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁶ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file her application for review within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁸

In the June 11, 1998 letter, which constituted her reconsideration request, appellant argued that Dr. Schiffman did not provide a specific diagnosis; that there were "several inaccuracies in the initial documentation" provided by Dr. Schiffman; and that Dr. Schiffman did not properly address the pain in her entire right arm. The main issue in the present case is medical in nature, *i.e.*, whether the medical evidence establishes that appellant has permanent impairment of her right arm which entitles her to a schedule award under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Appellant's argument is not directly relevant to this issue in that the issue should be addressed by the submission of medical evidence which shows that she has a permanent impairment which entitles her to a schedule award.⁹ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

In the present case, appellant has not established that the Office abused its discretion in its July 16, 1998 decision by denying her request for a review on the merits of its June 12, 1997 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁷ 20 C.F.R. § 10.138(b)(2).

⁸ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁹ Moreover, it should be noted that Dr. Schiffman provided a specific diagnosis of appellant's condition and considered the reported pain in her entire right arm.

¹⁰ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated September 3 and July 16, 1998 are affirmed.

Dated, Washington, D.C.
June 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member