

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE M. HURT and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

*Docket No. 99-1222; Submitted on the Record;
Issued June 20, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about June 24, 1997 causally related to her April 16, 1997 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs in its October 30, 1998 decision 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.

On April 16, 1997 appellant, then a postal clerk, filed a claim for compensation benefits alleging that she sustained an injury to her left knee during a fall at work. On that same day appellant was restricted from full duty after her knee injury was evaluated by occupational health services. On April 30, 1997 appellant accepted a limited-duty assignment which restricted her duties to preparing and dispatching mail, boxing mail in different operations, loading ledges and sweeping mail, and walking only two hours and standing only six hours per day. On May 30, 1997 the Office accepted as compensable appellant's claim for contusion of the left knee.

On August 20, 1997 appellant filed a claim for recurrence of disability, alleging that the original injury caused additional disability on June 24, 1997. Appellant stopped work on that day. Appellant alleged that she had continually experienced pain in her left knee since the April 16, 1997 work incident, and as a result, she could not stand or walk for long periods of time. Appellant submitted with her claim an attending physician's report by Dr. Arnold Goldman, a Board-certified orthopedic surgeon, dated August 5, 1997, who diagnosed appellant with impingement of the right shoulder; contusion of the left knee; contusion of the right shoulder and prepatellar bursitis of the left knee. He indicated by checkmark that he believed appellant's condition was caused by her fall at work on April 16, 1997. Dr. Goldman concluded that, as of June 26, 1997, appellant was totally disabled.

On August 22, 1997 the Office requested additional information from appellant showing either, that there was a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The Office informed appellant

that, since she had been performing light or limited duty at the time of her recurrence, she needed to submit evidence, which showed that she could no longer perform the light or limited duty. Appellant was allotted 30 days within which to respond.

Appellant submitted letter reports dated August 5 and 13, 1997 from Dr. Goldman, which noted the condition of appellant's right shoulder and left knee and requested authorization that magnetic resonance imaging (MRI) scans be performed to rule out other possible conditions. In reference to appellant's work duties, he stated in the August 5, 1997 letter, "[i]n terms of her work racking mail, if this is the only level of activity permitted, then she remains totally disabled." Dr. Goldman stated in the August 13, 1997 letter, "she is on her feet all day and has to sort/rack mail. I have recommended total disability at this point."

On September 17, 1997 appellant's employing establishment forwarded to the Office a CA-8 form from appellant, who requested continuing compensation on account of her disability. The employing establishment indicated that, although limited duties were available to appellant, she had not returned to work.

In response to the Office's request, appellant submitted additional letter reports from Dr. Goldman dated September 23 and October 16, 1997, which noted the condition of her right shoulder and left knee and requested again authorization that MRI scans be conducted. In reference to appellant's work duties, he stated, in the September 23, 1997 letter, "[P]atient is currently not working. If sedentary work/light duty were available, she may return to work. Otherwise, she remains totally disabled." Dr. Goldman stated in the October 16, 1997 letter, "[I]n terms of work if sedentary work is available, she may work but should avoid racking mail."

By decision dated July 27, 1998, the Office denied appellant's claim for compensation on the grounds that the evidence of record did not contend that appellant had a change in the nature and extent of the light-duty job requirements, or a change in the nature and extent of the injury-related condition.

On August 5, 1998 appellant requested reconsideration of the July 27, 1998 decision. She argued that the decision to disallow her claim was based solely on reports that contained no medical proof that her left knee had been damaged. Appellant submitted in support of her request the first page of an MRI report of her left knee and lumbosacral spine, both of which were conducted on May 23, 1998.

In an October 30, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and therefore insufficient to warrant review of the prior decision.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or about April 16, 1997 causally related to her June 24, 1997 accepted 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 requirements.¹ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing June 24, 1997 and her April 16, 1997 employment injury.² This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.³

In this case, appellant has not established a change in the nature and extent of her accepted knee injury or a change in the nature and extent of her light-duty job requirements such that she can no longer perform the limited duties. By letter dated August 22, 1997, appellant was advised of the deficiencies in the claim and afforded the opportunity to submit the necessary evidence. The medical reports submitted in response to the Office's request remain deficient of the requisite medical evidence. The reports filed from the time of appellant's claimed recurrence on June 24 to October 16, 1997 only noted the condition of appellant's left knee, and never indicated that the knee injury had materially changed or worsened so that it would prevent her from her limited-work duties. In fact, Dr. Goldman stated in each of his reports that appellant could return to light and sedentary work so long as it did not involve sorting and racking mail, which appeared to refer to a shoulder condition suffered by appellant, unrelated to her accepted injury claim. The Board notes that this case record does not include a claim for a shoulder injury. Dr. Goldman never referred to any of the duties outlined in appellant's light-duty assignment, which related to her knee injury, or provided any opinion explaining how appellant's knee condition caused disability for work on or after June 24, 1997. Thus, although the Office afforded appellant the opportunity to correct the deficiencies in her claim, she has not established a change in the nature or extent of her light-duty job requirements such that she cannot perform those duties or a change in her accepted condition. Accordingly, appellant has failed to meet her burden of proof in establishing a recurrence of disability.

The Board further finds that the refusal of the Office in its October 30, 1998 decision to reopen appellant's case for further consideration of the merits of her claim did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ 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

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

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ 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).

law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ 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.⁷

The medical evidence provided on reconsideration was immaterial in terms of establishing appellant's recurrence claim. The MRI report was the only evidence submitted by appellant, and it merely provided information as to the medical status of her left knee the day that the test results were interpreted, which was almost a year after the alleged recurrence on June 24, 1997. Appellant submitted no further medical evidence that established that the alleged recurrence on June 24, 1997 was causally related to her work-related injury on April 16, 1997, and that her limited-work duties had been altered, or that the condition of her knee had changed or worsened so as to prevent her from limited-work duty. The July 27, 1998 decision denying appellant's recurrence claim, was issued on the basis that appellant failed to establish a causal relationship between her recurrence of disability on June 24, 1997 and her accepted employment injury on April 16, 1997, and to demonstrate that a change occurred in the nature and extent of her light-duty job requirements, or in the nature and extent of the injury-related condition so as to prevent her from performing such duties. Because the medical evidence submitted on reconsideration contained no rationalized opinion causally relating appellant's alleged recurrence of disability to her April 16, 1997 injury, or evidence that her injury-related condition had changed so as to prevent her from performing limited-work duties originally assigned to her, it is of little probative value to support review of her recurrence claim.

Appellant has not established that the Office abused its discretion in its October 30, 1998 decision by denying her request for a review on the merits of her claim under section 8128(a) of the Act, because she failed to show that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

The decisions of the Office of Workers' Compensation Programs dated October 30 and July 27, 1998 are affirmed.

Dated, Washington, D.C.
June 20, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member