

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA A. YANCY and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Huntington, WV

*Docket No. 98-1463; Submitted on the Record;
Issued May 17, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) in its decision of July 9, 1997; (2) whether appellant sustained a recurrence of disability causally related to her accepted employment injuries; (3) whether the Office abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a) of its January 28, 1998 decision; and (4) whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

In this case, the Office accepted the conditions of a right knee sprain and a low back strain for a February 20, 1987 incident. Appellant received appropriate compensation for all relevant time periods. By decision dated June 6, 1995, the Office terminated compensation for continuing benefits finding that the weight of the medical evidence of record supported that there was no residual disability from the February 20, 1987 work injury. By decision dated April 14, 1996, an Office hearing representative affirmed the prior decision. In a February 6, 1997 letter, appellant requested reconsideration and submitted new evidence.

By decision dated March 3, 1997, the Office denied appellant's reconsideration request after conducting a review on the merits. In a May 20, 1997 letter, appellant again requested reconsideration.

By decision dated July 9, 1997, the Office denied appellant's reconsideration request on the basis that the evidence submitted was insufficient to warrant a merit review.

On September 20, 1997 appellant filed a claim asserting that she sustained a recurrence of disability on September 2, 1996 causally related to her accepted employment injuries. By decision dated January 28, 1998, the Office denied appellant's claim of recurrence. In a letter of March 3, 1998, appellant requested reconsideration.

By decision dated March 12, 1998, the Office denied appellant's reconsideration request on the basis that the evidence submitted was insufficient to warrant a merit review.

In a March 26, 1998 letter, appellant requested a hearing before an Office representative. By decision dated May 19, 1998, the Office denied appellant's request for an oral hearing as untimely under section 8124 of the Federal Employees' Compensation Act.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Inasmuch as appellant filed her appeal with the Board on March 27, 1998, the only decisions properly before the Board are the Office's July 9, 1997 decision denying reconsideration of the Office's finding that appellant had no further disability due to her February 20, 1987 injury, the January 28, 1998 decision denying appellant's recurrence claim, the March 12, 1998 decision denying appellant's request for reconsideration of the Office's January 28, 1998 decision, and the May 19, 1998 decision denying appellant's request for an oral hearing.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) in its decision of July 9, 1997.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² 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.³ 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.⁴ 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.⁵

In this case, the July 9, 1997 denial of appellant's reconsideration request pertained to the Office's prior decision of March 3, 1997, whereby the Office denied modification of its prior decision wherein appellant's benefits were terminated effective June 6, 1995 as the weight of the medical evidence supported that appellant had no ongoing disability causally related to her February 20, 1987 work injury.

In her May 20, 1997 request for reconsideration, appellant stated that, "as I read these reports from the examiner, it strongly appears that the medical documents are simply being made a mockery of the interpretation of these statements. I intend to provide additional medical evidence for you." No new evidence was submitted.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Oel Noel Lovell*, 42 ECAB 537 (1991).

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 101.38(b)(1)-(2); *Thankamma Mathews*, 44 ECAB 788 (1993).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

Appellant's letter of May 20, 1997 merely noted her disagreement with the claims examiner's interpretation of the medical documents. Accordingly, appellant failed to raise any substantive legal questions or advance a point of law or fact not previously considered by the Office. Moreover, appellant did not provide any new or relevant medical evidence. As appellant failed to meet the criteria set forth under section 8128(a) of the Act, the Office properly utilized its discretion by refusing to reopen appellant's case for merit review.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her accepted employment injuries.

Under the Act,⁶ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.⁷ As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related injury,⁸ and supports that conclusion with sound medical reasoning.⁹ Thus, the medical evidence must demonstrate that the claimed recurrence of disability was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰ In this regard, medical evidence of bridging symptoms between the recurrence of disability and the accepted injury must support the physician's conclusion of a causal relationship.¹¹

Appellant filed a claim for a recurrence of total disability for the period September 11, 1996 through January 23, 1997. She reported that she suffered a recurrence of disability on September 2, 1997 and was instructed by her physicians to remain off work. Appellant stated that upon her return to the Herald Dispatch News she was fired for not adhering to the work schedule. Appellant alleged that her back and neck problems in September 1996, knee problems on October 6, 1996 and back and neck problems in July 1997 were causally related to her accepted employment injury. She listed her various employment within the private sector from December 1995 through June 1997.

In a December 2, 1997 letter, the Office advised appellant that further medical evidence was needed to support a relationship between the conditions which were causing her to be totally disabled during the claimed period and her previously accepted 1987 work-related conditions of low back and right knee strains. The Office informed appellant that, if the reason she had to seek

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

⁸ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁹ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹¹ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

medical attention or stop work was due to the tasks she was required to perform while employed in the private sector, coverage under the Act would not apply. The Office noted that contemporaneous medical evidence supported that appellant received medical attention on September 2, 1996 for a low back pain experienced while removing her clothing. The Office informed appellant that any event, such as what occurred on September 2, 1996, which precipitated a need for seeking medical attention also would not have coverage under the Act. The Office noted that, as appellant made reference to multiple injuries since 1987, she must submit medical evidence containing a physician's opinion which supports the full period of the claimed disability and the physician must base his opinion on an accurate history of the 1987 federal work injury as well as all other employment activities in the private sector/event of September 2, 1996 which occurred between 1987 and the claimed recurrence of total disability. The Office further noted that the physician's report must be based upon an accurate history of the original strain type of injury/conditions; objective findings/diagnosis found upon examination; dates of examination during the claimed recurrence; and the physician's well-reasoned opinion as to how the period of disability was due to the 1987 federal work injury.

The Board finds that none of the medical reports submitted address the issue of whether appellant's claimed recurrence of disability on and after September 11, 1996 is causally related to the February 20, 1987 accepted work-related injuries of right knee sprain and low back strain.

A September 2, 1996 emergency room report reveals that appellant was diagnosed with an acute LS strain and was advised to return to work on September 5, 1996. The report indicates that appellant sought medical treatment due to severe low back pain she experienced while taking off her jeans at noon. An October 1, 1996 emergency room report reveals that appellant was diagnosed with an acute lumbar strain and right knee pain with a meniscal tear rule out. Although both emergency room reports noted appellant's previous occupational injury in 1987, no opinion was provided to support a causal relationship between appellant's current condition and her 1987 accepted work injury.

Appellant has attributed her current problems of back strain and knee strain to the February 20, 1987 work injury and was informed by the Office that she was responsible for obtaining a rationalized medical report in support of her claimed recurrence of disability. However, appellant has failed to submit medical evidence which discusses her current conditions and the accepted conditions of right knee strain and low back strain, and then explains with medical rationale how the September 1996 recurrence of disability was a progression of or related to the employment-related injury in 1987. Inasmuch as appellant has failed to submit probative medical evidence establishing the required connection, the Office properly denied her claim for compensation.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a) of its January 28, 1998 decision.

In her March 3, 1998 letter requesting reconsideration, appellant stated that she has an appointment with a specialist scheduled for March 17, 1998 and that this appointment would provide pertinent information material to her claim. She stated "accompanying medical evidence will be forthcoming in the very near future." The Office, however, did not receive any medical evidence from appellant.

Appellant's letter of March 3, 1998 merely promised that a medical report would be submitted in the future. It did not identify the grounds upon which reconsideration was being requested, nor did her letter raise any substantive legal questions or advance a point of law or fact not previously considered by the Office. Moreover, appellant did not provide any new or relevant medical evidence. As appellant failed to meet the criteria set forth under section 8128(a) of the Act, the Office properly utilized its discretion by refusing to reopen appellant's case for merit review in its March 12, 1998 decision.

The Board additionally finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹² As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.¹³

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.¹⁴

In this case, the Office issued its decision finding that appellant had failed to establish that she sustained a recurrence of disability on or after September 2, 1996 on January 28, 1998. Subsequently, appellant requested an oral hearing in a letter dated March 26, 1998. Inasmuch as appellant did not request a hearing within 30 days of the Office's January 28, 1998 decision, she is not entitled to a hearing under section 8124 as a matter of right. Moreover, the Board notes that appellant had exercised her reconsideration rights prior to requesting an oral hearing. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that she could have her case further considered on reconsideration by submitting relevant evidence. Consequently, the Office properly denied appellant's hearing request.

¹² 5 U.S.C. § 8124(b)(1).

¹³ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

¹⁴ *Henry Moreno*, 39 ECAB 475 (1988).

The May 19, March 12 and January 28, 1998 and July 9, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
May 17, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member