U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA T. FOSTER and U.S. POSTAL SERVICE,
POST OFFICE, Tuskegee, AL

Docket No. 99-1237; Submitted on the Record;
Issued May 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective September 13, 1998; and (2) 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 the Federal Employees' Compensation Act.

On February 6, 1986 appellant, then a 46-year-old postal clerk, filed a notice of traumatic injury alleging that on that same date she injured her back and abdominal area while taking mail parcels out of a hamper in the course of her federal employment. The Office accepted the claim for a lumbosacral strain and chronic aggravation of her preexisting apophysitis at L4-5. Appellant subsequently received compensation for total temporary disability.

On March 20, 1995 Dr. Sidney H. Yarbrough, then appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant was capable of working four hours per day within restrictions. He did not provide a narrative report addressing any objective findings or medical rationale in support of appellant's continued disability.

On August 28, 1995 the Office authorized Dr. Charles E. Thomas, a Board-certified internist, to serve as appellant's treating physician. Appellant subsequently submitted treatment notes from Dr. Thomas' office documenting treatment from September 25, 1995 through July 9, 1998 which did not address whether appellant continued to suffer residuals from her accepted employment injury.

On July 21, 1997 the Office referred appellant to Dr. Timothy Holt, a Board-certified orthopedic surgeon, for a second opinion examination. On July 31, 1997 Dr. Holt reviewed appellant's history of injury and the treatment she received. He noted that appellant complained of pain in her lower back, neck, arm and leg. Dr. Holt also noted complaints of headache and stress. He performed a complete physical examination. He noted decreased sensation to pin prick on the left over the thigh and calf. Dr. Holt indicated that the range of motion of her

lumbar spine was relatively good with some pain on the end point. He stated that appellant's x-rays showed early degenerative changes in the lower lumbar spine and no gross olisthesis, dislocation, space occupying or destructive lesion. Dr. Holt opined that it was quite unlikely that appellant continued to have disabling pain from her lumbosacral strain or the aggravation of that condition since 1986. He indicated that appellant's chronic back pain was mostly mechanical in nature. Dr. Holt stated that the lumbosacral strain had resolved and that any aggravation of appellant's preexisting apophysitis from the lumbosacral sprain had also resolved.

On January 14, 1998 Dr. Holt stated that appellant's lumbosacral strain and the aggravation of her preexisting apophysitis resolved within six months of the injury. He stated that appellant's current problems were related to her underlying apophysitis.

On July 1, 1998 the Office issued a notice of proposed termination of compensation. The Office indicated that the weight of the medical evidence, as represented by the opinion of Dr. Holt, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional argument of evidence. He did not submit any new evidence.

By decision dated August 26, 1998, the Office finalized its proposed termination of benefits. In an accompanying memorandum, the Office indicated that Dr. Holt's opinion remained the weight of the medical evidence.

On September 3, 1998 appellant requested reconsideration and indicated that she would submit additional medical evidence, specifically an opinion from Dr. W.L. Pinchback, Jr., an orthopedic surgeon. She subsequently failed to submit any additional evidence.

By decision dated September 30, 1998, the Office denied appellant's request for reconsideration because she neither raised substantive legal questions nor submitted new and relevant evidence.

The Board finds that the Office met it burden in terminating appellant's compensation effective September 13, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to her federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.[2] Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.[3] To terminate authorization or medical treatment, the Office must

[1] *Frederick Justiniano*, 45 ECAB 491 (1994).

[2] *Id.*

[3] *Furman G. Peake*¸ 41 ECAB 361, 364 (1990).

establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.[4]

In the present case, Dr. Holt, a Board-certified orthopedic surgeon, provided a well-rationalized opinion on July 31, 1997 and on January 14, 1998 stating that appellant's accepted conditions, a lumbosacral strain and the aggravation of her preexisting apophysitis, had resolved. He based his conclusion on his thorough physical examination, showing a good range of motion of the lumbar spine, and on x-ray evidence showing only early degenerative changes in the lower lumbar spine and no gross olisthesis, dislocation, space occupying or destructive lesion. Neither of appellant's treating physicians, Dr. Yarbrough, a Board-certified orthopedic surgeon, or Dr. Thomas, a Board-certified internist, provided a recent medical opinion addressing whether appellant continued to suffer residuals from her accepted employment injuries. Dr. Thomas never addressed whether appellant suffered residuals causally related to her employment injuries in his office notes dated September 25, 1995 through July 9, 1998. Moreover, Dr. Yarbrough did not address whether appellant suffered residuals causally related to her employment injuries in his most recent medical report dated March 20, 1995. Accordingly, the weight of the medical evidence rests with the well-rationalized opinion of Dr. Holt concluding that appellant's accepted injuries had resolved.[5]

The Board also finds that the Office properly refused to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a) of the Act.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law, or

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

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[6]

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.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does

[4] *Id.*

[5] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[6] 20 C.F.R. § 10.138(b)(1).

[7] *See* 20 C.F.R. § 10.138(b)(2).

not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[9]

In this case, appellant did not submit any new arguments in support of her claim. Although she indicated that she would submit new evidence in support of her claim, in particular a report from Dr. Pinchback, this evidence was not submitted.[10] Accordingly, appellant has not established that the Office abused its discretion in denying her request for review under section 8128 of the Act.

The decisions of the Office of Workers' Compensation Programs dated September 30 and August 26, 1998 are affirmed.

Dated, Washington, D.C.
May 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[8] *Daniel Deparini*, 44 ECAB 657 (1993).

[9] *Id.*

[10] Appellant submitted an opinion from Dr. Pinchback after the Office's September 30, 1998 decision denying reconsideration. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).