

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOUISE W. DOWD and U.S. POSTAL SERVICE,  
POST OFFICE, Milton, FL

*Docket No. 98-1634; Submitted on the Record;  
Issued November 6, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability during the period July 31 through August 11, 1997 on the grounds that the evidence of record was insufficient to establish total disability causally related to her March 1, 1984 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On March 1, 1984 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging on that date she experienced sharp pain in her lower back while in the performance of duty.

Appellant stopped work on June 7, 1986 and began receiving compensation for total wage loss on that date. On January 2, 1996 she returned to work four hours per day at the position of modified distribution clerk.

The Office accepted appellant's claim for low back strain, L5, S1 right lateral herniated disc, degenerative disc disease, cervical strain and herniated disc at C6-7 central and right.

On August 21, 1997 appellant submitted a claim for continuing compensation on account of disability (Form CA-8) alleging that she was totally disabled for work during the period July 31 through August 11, 1997.

In a letter dated September 5, 1997, the Office advised appellant that the medical evidence she submitted was insufficient to establish her claim. The Office further advised appellant to submit supportive medical evidence.

By decision dated October 17, 1997, the Office found the medical evidence of record insufficient to establish that appellant was totally disabled during the claimed period due to her March 1, 1984 employment injury. Accordingly, the Office denied appellant's claim. In a

January 5, 1998 letter, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated February 17, 1998, the Office denied appellant's request for modification based on a merit review. In a March 4, 1998 letter, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated March 19, 1998, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of an immaterial and a repetitious nature, and thus, insufficient to warrant review of the prior decision.<sup>1</sup>

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 during the period July 31 through August 11, 1997 on the grounds that the evidence of record was insufficient to establish total disability causally related to her March 1, 1984 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was filed within the applicable time limitation of the Act.<sup>3</sup> The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought are causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>4</sup>

In this case, appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability during the period July 31 through August 11, 1997 due to her March 1, 1984 employment injury. In support of her claim, she submitted medical evidence from Dr. Cesar L. Llanera, Jr., her treating physician and an anesthesiologist, who has a secondary specialty in general practice medicine. Specifically, several of Dr. Llanera's medical reports and treatment notes address appellant's disability during the claimed period.

Dr. Llanera's August 8, 1997 treatment notes revealed appellant's complaints regarding the aggravation of her right shoulder, cervical neck and lower back due to lifting files that were above her desk and weighed approximately 10 pounds each. His notes further revealed a review of an August 5, 1997 magnetic resonance imaging report and a diagnosis of status post trigger

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<sup>1</sup> The Board notes that subsequent to the Office's March 19, 1998 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

point blocks. Dr. Llanera stated it was anticipated that appellant could return to work on Monday or Tuesday, but it would be prudent to watch her condition over the weekend. Dr. Llanera's notes, however, failed to address whether appellant's disability was caused by the March 1, 1984 employment injury.

In an August 12, 1997 letter, Dr. Llanera indicated that appellant was under his care at that time for her chronic pain syndrome. He stated that appellant was to be off from work beginning July 11, 1997 and that she could return to work on August 12, 1997. Dr. Llanera further stated that appellant was unable to perform her duties at work because of her chronic pain complaints. He noted appellant's physical restrictions upon her return to work. The Office has not accepted appellant's claim for a chronic pain condition. In addition, Dr. Llanera failed to explain how or why appellant's disability was caused by the March 1, 1984 employment injury. Therefore, his letter is insufficient to establish appellant's burden.

In his August 15, 1997 attending physician's supplemental report (Form CA-20a), Dr. Llanera noted the date of injury as March 1, 1984 and provided diagnoses of chronic neck pain, cervical degenerative disc disease, failed cervical neck surgery, status post cervical discectomy and anterior fusion. He indicated that appellant's condition was due to the injury for which compensation was claimed by placing a checkmark in the box marked "yes." In his September 5, 1997 Form CA-20a, Dr. Llanera reiterated his findings as set forth in his August 15, 1997 Form CA-20a. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>5</sup> Inasmuch as Dr. Llanera failed to provide any medical rationale explaining his conclusion regarding the cause of appellant's conditions, his reports are insufficient to establish appellant's claim.

Dr. Llanera's October 21, 1997 letter revealed that appellant was totally disabled from working her usual job from July 31 through September 19, 1997 due to her chronic pain syndrome. As previously noted by the Board, the Office has not accepted appellant's claim for chronic pain syndrome. Further, Dr. Llanera failed to explain how or why appellant's disability was caused by the March 1, 1984 employment injury. Thus, his letter does not establish appellant's burden.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that she was totally disabled during the period July 31 through August 11, 1997 due to her March 1, 1984 employment injury, she has failed to satisfy her burden of proof.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>5</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

In the present case, appellant failed to show that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; neither did she advance a point of law not previously considered by the Office. In support of her March 4, 1998 request for reconsideration, appellant submitted employment records, which included notification of personnel action forms and the employing establishment's January 20, 1987 job offer which appellant accepted on that date. These documents are not relevant to the issue of whether appellant sustained a recurrence of disability during the period July 31 through August 11, 1997 due to her March 1, 1984 employment injury. Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>10</sup>

In further support of her request for reconsideration, appellant submitted Dr. Llanera's December 19, 1997 medical report and the Office's February 17, 1998 decision, which were previously of record. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup>

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office, and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

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<sup>6</sup> 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 her own motion or on application." 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. §§ 10.138(b)(1)-(2).

<sup>8</sup> *Id.* at § 10.138(b)(2).

<sup>9</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>10</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>11</sup> *Id.*

The March 19 and February 17, 1998 and October 17, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 6, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member