U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE M. NIXON-STEWARD and U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA

Docket No. 99-1345; Submitted on the Record;
Issued November 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly declined to reopen appellant's claim for reconsideration.

On November 20, 1996 appellant, then a 33-year-old mail clerk, filed a claim alleging she sustained injury to her back on November 19, 1996 while stacking mail hampers. Her claim was accepted by the Office for a back strain. Wage-loss benefits were paid from December 29, 1996 through January 18, 1997 based on CA-8 claims filed by appellant.

By decision dated November 5, 1997, the Office denied compensation benefits after January 18, 1997, finding that the weight of medical opinion established that she had no disabling residuals of the accepted back strain after that date. The Office noted that reports from appellant's attending physician, Dr. Richard A. Nolan, noted a normal electromyogram and described findings of pain in the lumbosacral junction but gave no explanation for his diagnosis of radiculitis and lumbar nerve compression syndrome. The Office also noted that Dr. Nolan did not explain his opinion on causal relationship.

On December 15, 1997 appellant requested reconsideration of her claim, which was denied by the Office in a January 6, 1998 decision. The Office found that a magnetic imaging resonance (MRI) scan and medical reports submitted by appellant did not provide a sufficient basis for attributing her lumbar degenerative disease to the accepted injury. The Office denied modification of the November 5, 1997 decision.

On March 18, 1998 appellant requested reconsideration, submitting a copy of her pre-employment medical records to support her contention that her only health concern prior to the November 19, 1996 injury was a severe asthmatic condition. She also submitted a letter from her pastor.

By decision dated August 7, 1998, the Office denied appellant's request for reconsideration on the basis that the arguments and evidence submitted were insufficient to warrant further merit review.

On December 31, 1998 appellant requested reconsideration and submitted additional medical treatment notes from Dr. Nolan dated April 8, July 27 and August 31, 1998. Dr. Nolan indicated appellant was seen for persistent pain at the lumbosacral junction. He indicated that appellant had persistent lumbar radicular symptoms consistent with the MRI findings, which he attributed to the November 19, 1996 industrial injury.

By decision dated January 19, 1999, the Office denied appellant's request for reconsideration. The Office found that Dr. Nolan's treatment notes substantially duplicated his reports already of record and did not provide rationale to support his stated conclusions.

The Board finds that the Office properly denied appellant's requests for reconsideration.

The only decisions before the Board in this appeal are the Office's decisions of August 7, 1998 and January 19, 1999, both denying further review of the merits of appellant's claim. As appellant did not file an appeal with the Board until March 9, 1999, the Board does not have jurisdiction over the merit decisions of November 5, 1997 and January 6, 1998.[1]

In order to require the Office to reopen a case for merit review, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; or (2) advance a point of law or a fact not previously considered; or (3) submit relevant and pertinent evidence not previously considered by the Office.[2] Any application for review that does not meet at least one of the above requirements will be denied without review of the merits of the claim.[3] Evidence which is repetitive or duplicative or evidence already in the case record has little evidentiary value and does not constitute a basis for reopening the claim.[4] Evidence that does not address the particular issue involved in the case does not constitute a basis for reopening a claim.[5]

With her March 18, 1998 reconsideration request, appellant submitted copies of her pre-employment medical records, job physical description and a letter from her pastor. These materials are not relevant to the issue in her case, which is medical in nature. The evidence submitted by appellant is not relevant to the issue of whether she remained disabled for work due to residuals associated with the November 19, 1996 employment injury after January 18, 1997.[6] For this reason, the Office properly denied her request for reconsideration on August 7, 1998.

Appellant requested reconsideration again on December 31, 1998 and submitted medical treatment notes from her attending physician. With regard to this evidence, the Board notes that effective January 4, 1999 the Office's implementing federal regulations provide that an application for reconsideration must be in writing and: (1) show that the Office erroneously

[1] *See* 20 C.F.R. § 501.3(d)(2).

[2] 20 C.F.R. § 10.138(b)(1).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

[5] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[6] The issue of whether a particular injury causes an employee disability for work is a medical question and must be resolved by competent medical evidence. *Maxine J. Sanders*, 46 ECAB 835 (1995).

applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered; or (3) constitute relevant and pertinent new evidence not previously considered.[7] Where the application fails to meet one of the standards as set forth, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[8]

The medical treatment notes submitted from Dr. Nolan are essentially repetitive of his prior reports to the Office. They address appellant's symptoms of continuing radicular pain in the lumbosacral area and his findings on physical examination. The reports, however, do not provide an explanation by Dr. Nolan for attributing appellant's continuing condition to the accepted soft tissue back strain. As Dr. Nolan merely reiterated his conclusion on causal relation, his reports are duplicative and do not constitute relevant and pertinent new evidence not previously considered. For this reason, the Office properly denied appellant's request for reconsideration on January 19, 1999.

The decisions of the Office of Workers' Compensation Programs dated August 7, 1998 and January 19, 1999 are affirmed.

Dated, Washington, DC
November 3, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[7] 20 C.F.R. § 10.606(b)(2).

[8] 20 C.F.R. § 10.608(b).