

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY C. CHESTNUT and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 00-505; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established a recurrence of disability commencing July 16, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

On July 10, 1981 appellant, then a 31-year-old letter carrier, filed a claim alleging that he injured his back and hip while opening a gate to deliver mail. The Office accepted a permanent aggravation of lumbosacral strain and lumbar disc disease.¹ Appellant returned to a modified position in 1981. On July 16, 1998 he filed a notice of recurrence of disability, stating that his condition had progressively worsened.

By decision dated December 8, 1998, the Office denied appellant's claim for a recurrence of disability commencing July 16, 1998. Appellant submitted a request for reconsideration dated May 6, 1999. In a decision dated May 25, 1999, the Office determined that the request was insufficient to warrant merit review of the claim.²

The Board finds that appellant has not established a recurrence of disability commencing July 16, 1998.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

¹ The record indicates that appellant had a back condition that preexisted his federal employment.

² On January 6, 1999 appellant submitted another notice of recurrence of disability. The Office developed the claim as a new occupational claim for injury resulting from the modified job duties and accepted aggravation of preexisting lumbar disc disease with myelopathy.

burden of proof, the employee must show either 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.³

Appellant did not present any probative evidence that his modified position had job duties that were outside his medical restrictions. Further, he did not submit probative medical evidence establishing that his work-related condition deteriorated in July 1998. In a form report dated July 27, 1998, Dr. Kenneth Shedd, an internist, diagnosed chronic low back and hip pain and indicated that appellant was totally disabled until October 15, 1998. In response to whether the disability was due to the employment injury, Dr. Shedd both checked a box “yes” and wrote “not clear.” The checking of a box “yes” alone is of little probative value,⁴ and the statement that causal relationship was “not clear” further diminishes the probative value to appellant’s claim. Appellant did not submit medical evidence containing a reasoned medical opinion on causal relationship with disability commencing July 16, 1998 and the accepted employment injury.⁵ It is appellant’s burden of proof to submit the necessary evidence and the Board finds he did not meet his burden in this case.

The Board further finds that the Office properly denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁶ the Office’s regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁸

In this case, appellant submitted an October 7, 1998 report from Dr. Shedd with his request for reconsideration. In his report, however, Dr. Shedd confirms his prior statement that he was not clear on causal relationship with employment, noting that appellant gave him a history of a 1971 back injury while in the military without reporting any other injury. The October 7, 1998 report does not constitute new and pertinent evidence supporting appellant’s claim for a recurrence of disability as of July 16, 1998. The Board finds that appellant did not

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁵ The record contains additional medical evidence with respect to appellant’s continuing medical condition, without providing a reasoned opinion on disability from July to October 1998 and its causal relationship with employment.

⁶ 5 U.S.C. § 8128(a) (providing that “[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”).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly denied merit review in this case.

The May 25, 1999 and December 8, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 21, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member