

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LaBRIDGETTE FLETCHER and DEPARTMENT OF THE NAVY,
NAVAL SHIP WEAPON SYSTEM ENGINEER STATION, Port Heuneme, CA

*Docket No. 99-1564; Submitted on the Record;
Issued February 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 19, 1999.

Appellant, a 34-year-old electronics engineer, filed a notice of traumatic injury on May 13, 1994, alleging that on January 12, 1994 she slipped on stairs at her temporary-duty station and injured her left leg. The Office accepted appellant's claim for left knee meniscus tear on June 9, 1994. The Office authorized arthroscopic surgery. Appellant returned to light-duty work. On November 15, 1995 appellant received a schedule award for 28 percent impairment of her left knee. The Office accepted that appellant sustained a recurrence of disability on April 9, 1996.

Appellant stopped work¹ and the employing establishment offered her a light-duty position. On June 9, 1997 the Office informed appellant that the employing establishment had offered her suitable work. The Office allowed appellant 30 days to accept the position or offer her reasons for refusing. Appellant accepted the position on June 12, 1997. On July 10, 1997 the employing establishment granted appellant leave without pay (LWOP) from June 23 to July 21, 1997. The employing establishment also granted LWOP from July 31 to October 24, 1997. Appellant elected to receive Office of Personnel Management retirement benefits on October 10, 1997. By decision dated October 22, 1997, the Office terminated appellant's compensation benefits finding that she failed to work once suitable work had been offered to her.

¹ Appellant sustained a second employment-related injury in October 1996 involving her head, neck and back. The record does not contain the documentation of this claim, No. 13-1120892.

Appellant requested reconsideration of this decision on December 4, 1997. By decision dated February 24, 1998, the Office declined to reopen appellant's claim for review.²

Appellant requested reconsideration on October 20, 1998. By decision dated January 19, 1999, the Office stated that it declined to reopen appellant's claim for consideration of the merits.³

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant requested reconsideration of the October 22, 1997 merit decision on October 20, 1998. In support of her reconsideration request, appellant submitted additional medical evidence consisting of a May 29, 1998 report from Dr. Alan Peter, a Board-certified internist, and a May 17, 1998 report from Dr. Mark J. Ghilarducci, a Board-certified orthopedic surgeon. Appellant also submitted several medical documents which were previously considered by the Office.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In this case, appellant submitted new evidence not previously considered by the Office. In his May 29, 1998 report, Dr. Peter noted appellant's history of injury and diagnosed fibromyalgia. He stated that he believed that appellant was totally disabled given the length of her symptoms and provided work restrictions. In his November 25, 1997 report considered by the Office on February 24, 1998, Dr. Peter noted appellant's history of injury and diagnosed post-traumatic fibromyalgia. Dr. Peter's May 29, 1998 report is substantially similar to his November 25, 1997 report previously considered by the Office. As Dr. Peter's report does not offer pertinent new evidence addressing the issue before the Office, whether appellant neglected to work when suitable work was procured for her in 1997, the report is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant also submitted a report, dated May 17, 1998, from Dr. Ghilarducci. In this report, Dr. Ghilarducci related his findings regarding appellant's left knee and stated that she had been "given a diagnosis of fibromyalgia recently." He repeated his previous recommendation of an anterior cruciate ligament reconstruction. Dr. Ghilarducci did not provide any opinion

² The Board notes that the Office issued these decisions more than one year prior to the date of appellant's appeal to the Board on April 20, 1999. For this reason, the Board lacks jurisdiction to review these decisions on appeal. 20 C.F.R. § 501.3(d)(2).

³ Following the Office's January 19, 1999 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 10.609(a) and 10.606(b).

regarding appellant's inability to perform the duties of the accepted suitable work position in 1997. His report is not relevant to the issue before the Office, whether appellant was disabled at the time of suitable work determination such that the offered and accepted position was no longer suitable.

As appellant failed to support her request for reconsideration with relevant new evidence, the Office properly declined to reopen her claim for consideration of the merits.

The January 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member