U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY J. WALLACE and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, North Metro, GA

Docket No. 99-2305; Submitted on the Record;
Issued February 14, 2001

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of total disability beginning February 14, 1998; and (2) whether the Office of Workers' Compensation Programs, by its May 19, 1999 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

The Office accepted that appellant sustained lateral epicondylitis of her left elbow due to the performance of her duties as a flat sorter. The Office authorized surgery on appellant's left elbow and on March 19, 1996 Dr. Gary S. Simon performed an excision of granular tissue and a lateral epicondylar release with reattachment of the extensor tendon of appellant's left elbow. With the exception of brief periods when she returned to work, appellant received compensation for temporary total disability from May 29, 1995 until she returned to work as a modified clerk on September 14, 1997. By decision dated November 24, 1997, the Office found that the position of modified clerk fairly and reasonably represented appellant's wage-earning capacity and that she had no loss of wage-earning capacity effective September 14, 1997. On January 6, 1998 the Office issued appellant a schedule award for a 10 percent permanent loss of use of her left arm; the period of the award was from October 21, 1997 to May 27, 1998.

On February 12, 1998 appellant filed a claim for a recurrence of disability and a claim for lateral epicondylitis due to coldness in the building in which she was working. Appellant stopped work on February 14, 1998. By decision dated June 3, 1998, the Office found that the evidence failed to establish that appellant was totally disabled for work beginning February 14, 1998. Appellant requested a review of the written record and an Office hearing representative, by decision dated November 27, 1998, found that appellant had not submitted rationalized medical opinion evidence with objective findings supporting total disability beginning February 14, 1998. By letter dated February 18, 1999, appellant requested reconsideration and submitted additional evidence. By decision dated May 19, 1999, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

The Board finds that appellant has not established that she sustained a recurrence of total disability beginning February 14, 1998.

The limited-duty assignment which appellant began on September 14, 1997 was part of a quality improvement program and involved observation of mail processing operations and completion of a checklist and collection of data. The physical requirements of the assignment were listed as: "Standing 25 percent, walking 25 percent, sitting 15 percent (includes times for computer input); bending 5 percent, computer input up to 10 percent, writing 20 percent or more, lifting 5 percent (up to 5 [pounds]); reaching and working above shoulders not over 5 pounds." These physical requirements were in compliance with the work tolerance limitations set forth by Dr. Simon in reports dated August 8 and September 19, 1997. There is no evidence that the nature and extent of the requirements of appellant's limited-duty position changed between September 14, 1997 and February 14, 1998.

The evidence also does not establish a change in the nature and extent of appellant's injury-related condition such that she could no longer perform the duties of her limited-duty assignment. In a report dated February 11, 1998, Dr. Simon indicated appellant could perform modified work. In a report dated February 12, 1998, Dr. Richard M. Klaus noted that appellant was "having recurrent problems with her elbow and when holding a clipboard with her left arm in an awkward position she is finding recurrent problems." Dr. Klaus did not state that appellant was totally disabled, instead stating that she was "to have limited activity with her left arm" and a "[f]ive [pound] [l]ifting limit with left upper extremity." These restrictions would allow appellant to continue her limited-duty assignment.

In a report dated March 12, 1998, Dr. Klaus again noted "an exacerbation of pain by holding a clipboard and writing in an awkward position," and he also stated that "this cold weather snap we have had has also been an aggravating factor." Dr. Klaus stated that appellant "has all the signs of recurrent lateral epicondylitis of the left elbow," and again stated that appellant "has to have limited duty to the left elbow." In a separate note dated March 12, 1998, he indicated that appellant should be off work until her next appointment on March 25, 1998. This note and an April 15, 1998 report indicating appellant was unable to work from April 15 to May 29, 1998 do not show any change in the nature and extent of appellant's injury-related condition.

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

In a report dated March 25, 1998, Dr. Klaus stated:

> "She returned to work in September 1997 and had a marked exacerbation of left elbow pain, quite consistent with recurrent lateral epicondylitis. It was felt that this was a continuation of her first injury, as it never completely resolved and the exercise of holding onto a clipboard and writing and lifting at work was causing the exacerbation."

In a report dated April 15, 1998, he stated:

> "Returns with her elbow quite tender and an acute exacerbation of her lateral epicondylitis of this left elbow. [Appellant] is right handed and is getting symptoms by holding onto the clipboard with the left hand and writing on it with the right hand."

Dr. Klaus then stated:

> "She keeps aggravating it when at work and has not had a chance for it to heal. I think she needs a change in work demands and cannot do repetitive motions with her left arm and cannot use the clipboard to write upon."

This report reflects a misconception on Dr. Klaus' part that appellant was still working, when she had not in fact worked since February 13, 1998, a misconception seemingly also at play in his March 12, 1998 report. Dr. Klaus' reports are not sufficient to meet appellant's burden of proving a recurrence of total disability beginning March 12, 1998 because they are based on an inaccurate history, but mainly because they do not show a change in the nature and extent of appellant's injury-related condition. Dr. Klaus does not present any physical findings to substantiate his diagnosis of recurrent lateral epicondylitis and his statements on disability consist essentially repetition of appellant's complaint that she hurt too much to work, which without objective signs of disability, does not constitute a basis for payment of compensation.[2]

The Board further finds that the Office, by its May 19, 1999 decision properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

[2] *Anna Chrun*, 33 ECAB 829 (1982).

Under 20 C.F.R. § 10.605(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

With her February 18, 1999 request for reconsideration, appellant submitted two reports from Dr. Scott M. Levere stating that she could perform sedentary work with lifting up to 15 pounds, a January 26, 1999 functional capacities evaluation report and a March 25, 1999 report from Dr. Klaus stating that reconditioning should be attempted. None of this evidence addresses the determinative issue of whether appellant was totally disabled beginning February 14, 1998 due to her employment-related condition.

The decisions of the Office of Workers' Compensation Programs dated May 19, 1999 and November 27, 1998 are hereby affirmed.

Dated, Washington, DC
February 14, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[3] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).