

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THURMAN ROWE and U.S. POSTAL SERVICE,
POST OFFICE, Huntington, WV

*Docket No. 00-2568; Submitted on the Record;
Issued July 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on May 4, 1999 causally related to his December 10, 1998 employment injury; and (2) the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On December 10, 1998 appellant, then a 49-year-old mailhandler, filed a claim for traumatic injury alleging that on that day he injured his back while in the performance of duty.

On January 28, 1999 the Office accepted appellant's claim for lumbar sprain.

On May 5, 1999 appellant alleged that he sustained a recurrence of disability on May 4, 1999.

By letter dated May 11, 1999, the Office advised appellant that he needed to submit additional information regarding his recurrence of disability claim including dates of examination and treatment, a detailed description of findings, test results and all his treatment records for the accepted injury since onset. The Office also required that appellant's doctor "submit a narrative report, which includes: [his] opinion, with supporting documentation, as to the causal relationship between [appellant's] current disability/condition and the original injury."

In a report dated May 3, 1999 and received by the Office on May 14, 1999, Dr. Panos Ignatiadis, Board-certified in neurological surgery, related appellant's complaints of pain "for at least a week," noting severe radicular pain in his back and left leg. Dr. Ignatiadis placed appellant on temporary disability and ordered a magnetic resonance imaging (MRI) scan.¹

¹ Dr. Ignatiadis did not indicate when he examined appellant; however, appellant noted in his claim form that he was treated by Dr. Ignatiadis on May 3, 1999.

In a report dated May 24, 1999, Dr. Ignatiadis stated that appellant had undergone surgery for a large herniated disc in April 1998 and “has done well.” He then noted appellant’s recent back pain, “identical to what he had before” and subsequent MRI scan, which revealed no evidence of recurrent or residual disc herniation. Dr. Ignatiadis noted some degenerative changes at L4-5. He added:

The relationship between his current complaint to what he has had before is based scientifically on the complaint from the lower back to the leg as he has had prior to the surgery of April 1998. Hence, his complaints are related to the accident he sustained. He has an exacerbation of his back problem.

By decision dated July 13, 1999, the Office denied appellant’s claim.²

In a letter dated August 9, 1999, appellant requested reconsideration.

In a report dated June 30, 1999 and received by the Office on July 23, 1999, Dr. Ignatiadis stated that appellant initially injured his back on December 10, 1998 and that he has had continuing symptoms of lumbar sprain as a result. He noted that appellant was disabled from May 3 to July 5, 1999.

In a report dated April 28, 1999 and received by the Office on August 16, 1999, Dr. James Toothman, Board-certified in internal medicine, stated that he had examined appellant on that date, noted a history of back pain and recent onset on April 27, 1999. Appellant related that he had had “no recent injuries but may have twisted his back the wrong way.”

In a report initially dated May 24, 1999 but amended, Dr. Ignatiadis stated that appellant’s “current condition is related to his accident of December 10, 1998 as he was doing fine from his earlier surgery and returned to work with no problems.”

By merit decision dated September 15, 1999, the Office denied appellant’s request for reconsideration.

By letter dated October 1, 1999 appellant, through his congressman, requested reconsideration.

By nonmerit decision dated January 12, 2000, the Office denied appellant’s request for review of the decision on the grounds that the evidence submitted in support of his request was repetitious and therefore insufficient to warrant a merit review.

The Board has duly reviewed appellant’s case and finds that he failed to meet his burden of proof in establishing a recurrence of disability on May 4, 1999, causally related to his December 10, 1998 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing

² The record file contains a document not associated with this claim.

May 4, 1999 and his December 10, 1998 employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

In this case, Dr. Ignatiadis opined in his initial May 24, 1999 report that appellant's current condition is related to the accident he sustained, but does not provide a rationalized medical opinion supporting his conclusion that appellant's condition is related to the December 10, 1998 work-related injury. In fact, he noted an MRI scan which failed to reveal a recurrent or residual disc herniation. Dr. Ignatiadis' opinion therefore is speculative and thus is insufficient to establish a causal relationship between appellant's initial injury and his alleged recurrence. The fact that appellant's complaints are similar to his prior complaints concerning the initial work-related injury is insufficient to establish a causal relationship between the two conditions.

Further, Dr. Toothman in a report dated April 28, 1999, noted that appellant related that he may have twisted his back the wrong way on the prior day. This would constitute a new injury and thus is not probative on the issue of whether appellant sustained a recurrence of disability.

With respect to Dr. Ignatiadis's addendum report, his explanation for finding that appellant's condition was causally related to his initial work-related injury was that he had no back problems prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.⁵ Dr. Ignatiadis gave no explanation on how appellant's December 10, 1998 employment injury was causally related to his May 4, 1999 condition.

Appellant has failed to meet his burden of proof in establishing disability on or after May 4, 1999 causally related to his employment as he has failed to submit the necessary medical evidence explaining why and how his December 10, 1998 employment injury caused a recurrence on May 4, 1999. Without this medical evidence, appellant has not established his claim for recurrence of disability on or after May 4, 1999.

Further, the Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ *Kimper Lee*, 45 ECAB 565 (1994).

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 must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁷ 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.⁸ To be entitled to 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.⁹

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case,¹⁰ and that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹ However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.¹²

In his October 1, 1999 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a point of law nor did he advance a point of law not previously considered by the Office. Appellant resubmitted Dr. Ignatiadis' addendum, which the Office had previously considered. Consequently, the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.606(b), noted above.

For these reasons, the Office's refusal to reopen the case for a merit review did not constitute an abuse of discretion.

⁶ 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 his own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b) (1999).

⁸ 20 C.F.R. § 10.608(b) (1999).

⁹ 20 C.F.R. § 10.607(a) (1999).

¹⁰ *Daniel Deparini*, 44 ECAB 657 (1993); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹² *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

The decisions of the Office of Workers' Compensation Programs dated January 12, 2000 and September 15, 1999 are affirmed.

Dated, Washington, DC
July 10, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member