

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD B. JENKINS and U.S. POSTAL SERVICE,
POST OFFICE, Portsmouth, VA

*Docket No. 01-64; Submitted on the Record;
Issued July 26, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on March 14, 2000 causally related to his accepted injury of July 10, 1995; and (2) whether 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 constituted an abuse of discretion.

On July 10, 1995 appellant, then a 39-year-old letter carrier, filed a claim alleging an injury to his lower back and right leg sustained while in the performance of duty. The Office accepted his claim for a lumbar strain. On September 12, 1997 the Office terminated appellant's wage-loss compensation on the grounds that he had returned to work as a modified clerk and that the modified position represented his wage-earning capacity.

On April 13, 2000 appellant filed a claim alleging a recurrence of total disability on March 14, 2000 due to the July 10, 1995 injury.

By letter dated April 25, 2000, the Office requested that appellant submit further evidence in support of his claim.

In response, appellant submitted an April 13, 2000 report from Dr. Andres H. Torop, a Board-certified radiologist, who reviewed a magnetic resonance imaging (MRI) scan taken that day and determined that appellant had a congenital narrowing of the spinal cavity exacerbated by L4-5 bulging. However, Dr. Torop did not find that appellant's condition was causally related to the work-related injury. In an April 10, 2000 report, Dr. Felix M. Kervin, appellant's treating Board-certified orthopedic surgeon, stated that he had examined appellant that day and diagnosed lumbar spinal stenosis. However, Dr. Kervin did not provide an opinion that appellant's current medical condition or disability was causally related to his July 10, 1995 work-related injury. In a May 5, 2000 report, Dr. Winifred D. Bragg, Board-certified in physical medicine and rehabilitation, stated that he had examined appellant on that day and found lumbar

stenosis. However, he did not relate appellant's current medical condition to his work-related injury.

In a decision dated July 17, 2000, the Office denied appellant's claim.

By letter dated July 26, 2000, appellant requested reconsideration. He submitted a letter discussing his medical treatment and the denial of his claim. No additional medical evidence was submitted.

By nonmerit decision dated August 18, 2000, the Office denied appellant's petition as the evidence submitted was insufficient to warrant review.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a recurrence of disability on March 14, 2000, causally related to his accepted July 10, 1995 injury.

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 of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, 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.¹

In this case, appellant has not submitted any medical evidence which relates his recurrence of total disability on March 14, 2000 to residuals of the accepted injury of July 10, 1995.

None of the reports submitted by Drs. Torop, Kervin or Bragg provide any opinion on the causal relationship between appellant's work-related injury and his diagnosed spinal stenosis. Moreover, the medical reports do not attribute any period of disability on or about March 14, 2000 to the accepted lumbar strain. Accordingly, appellant has failed to meet his burden of proof in establishing a recurrence of the March 14, 2000 injury.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review of the merits.²

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (i) showing that the Office erroneously applied or interpreted a specific point of law; or (ii) advancing a relevant legal argument not previously considered by the Office; or (iii) submitting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608 provides that, when an application for review of the

¹ *Gus N. Rodes*, 46 ECAB 518 (1995).

² 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).

³ 20 C.F.R. § 10.606(b)(2).

merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In this case, appellant submitted no new relevant and pertinent evidence in support of his July 26, 2000 request for reconsideration, nor did appellant show that the Office erroneously applied or interpreted a point of law. His lay opinion as to his medical treatment and disability for work does not constitute a relevant legal argument in the case. Accordingly, the Office properly denied appellant's request for review on the merits.

The decisions of the Office of Workers' Compensation Programs dated August 18 and July 17, 2000 are affirmed.

Dated, Washington, DC
July 26, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁴ 20 C.F.R. § 10.606(b)(2).