

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA KENDRA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Chicago, IL

*Docket No. 00-1897; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On August 19, 1996 appellant, then a 55-year-old secretary, filed a traumatic injury claim alleging that, on August 16, 1996, she injured her back while bending to unpack boxes and fill a supply cabinet. The Office accepted her claim for lumbosacral sprain. Appellant returned to a light-duty assignment on October 21, 1996.

Appellant filed a second traumatic injury claim on January 14, 1997 after she stamped charts for more than 100 drug patients, which required her to bend and stretch to operate the stamping device. Appellant did not work from January 15 to 27, 1997, at which time she returned to work.

Appellant filed a claim for a recurrence of disability on April 8, 1997 when she had a sudden onset of disabling pain in her left hip, which she stated was related to the previous injuries.¹ She was admitted to the hospital and diagnosed with "sciatica, with inability to ambulate." Later, Dr. Susan W. Balter, Board-certified in infectious disease, diagnosed a staphylococcus aureus infection and appellant underwent hip surgery. She has not returned to work since.

In a report from appellant's attending physician, Dr. Teresa Olivares, a Board-certified internist, dated June 30, 1997, found that appellant had an underlying degenerative joint disease and osteoarthritis and opined that appellant's left septic hip joint was "mostly indirectly related to" her injury as she had developed staph aureous bacterimea.

¹ The record does not contain this form.

On July 10, 1997 the Office referred appellant to Dr. Richard H. Sidell, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 5, 1997, he found that appellant's lower back strain on January 14, 1997 was a temporary aggravation of her preexisting spondylosis. Dr. Sidell also opined that neither appellant's condition of septic hip nor chronic spondylosis as work related and that there were no work restrictions directly attributable to the temporary aggravations of her back on August 16, 1996 or January 14, 1997. Dr. Sidell recommended that appellant avoid frequent bending, lifting and twisting, not lift more than ten pounds and restrict herself to minimal walking due to her hip condition. He indicated that the restrictions were probably on a permanent basis but were not related to a specific work injury.

By decision dated October 2, 1997, the Office accepted that on January 14, 1997 appellant suffered a temporary aggravation of her preexisting spondylosis. The Office also denied appellant's claim for a recurrence of disability on April 8, 1997 on the grounds that the medical evidence failed to demonstrate a causal connection to the injuries of August 16, 1996 and January 14, 1997.

By letter dated July 21, 1998, appellant requested reconsideration. She submitted medical reports from Dr. Robert J. Daley, a Board-certified orthopedic surgeon, and from Dr. Steve Michel, a Board-certified internist. In his December 5, 1997 report, Dr. Daley opined that it was "possible" that any prior injury may have contributed to her hip infection. In his January 21, 1998 report, Dr. Daley indicated that appellant's restrictions were permanent in nature.

Dr. Michel stated that appellant's condition would most likely be a permanent condition secondary to her August 16, 1996 work injury. Appellant also submitted a November 13, 1997 report from Dr. Olivares, who stated that appellant's work-related left lower back pain could possibly have involved her hip, which created a higher likelihood of an inflamed joint being "seated" with bacteria. [Referring to incident of January 14, 1997.]

By decision dated October 20, 1998, the Office denied modification of its prior decision.

By letter dated October 19, 1999, appellant requested reconsideration, stating that she was never assigned proper light duty and because of this continued to suffer recurrences of disability in her back and leg.²

By decision dated February 8, 2000, the Office denied appellant's application for review.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

² In her request, appellant noted that she had "some occupational exposure" to blood and other potentially infectious material and that this could have caused her bacterial infection from stamping drug-addicted patient's charts and identification cards.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³

Because appellant filed her appeal on May 9, 2000, the only decision before the Board on this appeal is the Office's February 8, 2000 decision denying appellant's request for a merit review of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a 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.⁶ 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.⁷

Appellant's claim was denied because she had not established that her April 8, 1997 recurrence was causally related to the injuries of August 16, 1996 or January 14, 1997. The issue was medical in nature.

When appellant requested reconsideration by letter dated October 19, 1999, she did not submit any new or relevant evidence. She submitted only a personal statement, which expressed her belief that she was never given a proper light-duty assignment and that this caused her recurrences. Appellant also submitted medical evidence contained in the record. The Board has repeatedly found that the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸

As appellant's October 19, 1999 request for reconsideration did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office acted within its discretion in denying that request.

³ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.606.

⁶ 20 C.F.R. § 10.607.

⁷ 20 C.F.R. § 10.608.

⁸ *Alton L. Vann*, 48 ECAB 259 (1996).

The February 8, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 8, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member