U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROCHELLE R. TYNES and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 00-2039; Submitted on the Record;
Issued June 19, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about September 22, 1997; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Federal Employees' Compensation Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.607(a) of the implementing regulations.

On June 16, 1987 appellant, then a 46-year-old mailhandler filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on June 16, 1987 she was pushing mail onto culling belts and throwing mail into hampers when she pulled a muscle in her left arm. The Office accepted appellant's claim for a left shoulder strain and paid appropriate compensation. Appellant did not stop work, but began working a light-duty position.

On April 18, 1989 appellant filed a notice of traumatic injury alleging that she stepped on an object and fell injuring her right hip, back and leg. The Office accepted appellant's claim for a lumbosacral strain and contusion of the right hip and paid appropriate compensation.[1] Appellant did not stop work, but again worked a light-duty position until 1993, at that time she returned to full duty.[2]

On December 20, 1991 appellant filed a Form CA-2a, notice of recurrence of disability. She indicated that her disability was due to a recurrence of pain in her left shoulder, due to employment-related injuries sustained on June 16, 1987. Appellant did not stop work. She

[1] The record indicates that the claim for appellant's left shoulder injury dated June 16, 1987 was combined with appellant's claim for right leg and hip injuries dated April 18, 1989 into case file No. A3-125315.

[2] The record indicates that appellant has two other claims before the Office for carpal tunnel syndrome filed April 23, 1991 and a hand injury filed June 8, 1987. However, these claims are not before the Board.

indicated that her recurrence of symptoms began on December 16, 1991. Appellant also filed a CA-7 claim for a schedule award.[3]

On September 22, 1997 appellant filed a Form CA-2a, notice of recurrence of disability. She indicated that her disability was due to a recurrence of pain in her right leg, due to employment-related injuries sustained on April 18, 1989. Appellant did not stop work. She indicated that her recurrence of symptoms began on September 22, 1997.

By letter dated October 7, 1997, the Office requested that appellant submit additional factual and medical evidence to support her claim.

In a decision dated November 18, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence failed to demonstrate that the claimed recurrence was causally related to the accepted work-related injury.

By letter dated December 3, 1997, appellant requested a hearing before an Office hearing representative. The hearing was held on June 22, 1998. Appellant testified that she was unable to work due to her leg pain. She indicated that her right knee and leg pain never resolved. Appellant noted that she consulted with Dr. Greene by telephone during the period of 1993 to 1997 and he recommended a heating pad and hot water to control the pain. She indicated that during this time frame she attempted to self-manage her pain by treating it symptomatically. The record was held open for 30 days for appellant to submit additional medical evidence.

Appellant submitted a report dated July 20, 1998 from Dr. Greene, who indicated that appellant had been under his care for a work-related knee injury, which occurred on April 18, 1989. He indicated that the cause of appellant's right knee problems was the work-related injury of April 18, 1989. Dr. Greene indicated that during the period of 1993 to 1997 appellant treated her pain symptomatically until the pain became unmanageable and she sought medical attention.

In a decision dated September 14, 1998, the hearing representative affirmed the decision of the Office dated November 18, 1997. The hearing representative determined that the evidence of record was insufficient to establish that the claimed recurrence was causally related to the accepted work-related injury.

By letter dated January 19, 1999, appellant through her attorney requested reconsideration of the Offices' decision dated September 14, 1998. She submitted additional medical records including progress notes from Dr. Greene dated April 26, 1993 to July 20, 1998; and magnetic resonance imaging (MRI) scans dated May 5, 1993 and October 13, 1997. The progress notes dated April 26, June 14 and July 14, 1993 document a history of appellant's knee injury of April 18, 1989 with a diagnosis of right peroneal neuropathy at the distal biceps or fibular head and a torn medial meniscus in the right knee. Dr. Greene's progress note dated September 22, 1997 documented appellant's continued experience with right leg problems. He diagnosed appellant with internal derangement of the right knee. The November 13, 1997 letter

[3] In a decision dated March 28, 1995, the Office denied appellant's claim for a schedule award. On April 25, 1995 appellant requested an oral hearing before an Office hearing representative. In a decision dated January 19, 1996, the Office hearing representative affirmed the decision of the Office dated March 28, 1995.

from Dr. Greene diagnosed a patellofemoral problem with degeneration of the kneecap. He noted that appellant's right knee condition was causally related to appellant's work-related injury of April 18, 1989. The progress note dated June 24, 1998 noted appellant's continuing knee condition. The July 20, 1998 progress note again indicated that that appellant's right knee condition was causally related to appellant's work-related injury of April 18, 1989. The MRI scan dated May 5, 1993 and October 13, 1997 indicated that a myxoid degeneration of the posterior horns of both medial and lateral menisci and findings suggestive of a possible small tear of the posterior horn of the medial meniscus; however, this determination was uncertain.

By decision dated February 4, 1999, the Office denied appellant's request for review on the grounds that the evidence was not sufficient to warrant review of the prior decision.

By letter dated April 22, 1999, appellant requested an appeal to the Employees' Compensation Appeals Board. The Board issued an order dismissing the appeal based on appellant's request to pursue reconsideration before the Office.[4]

By letter dated June 15, 1999, appellant requested reconsideration of the Offices' decision dated September 14, 1998. She submitted a report from Dr. Greene dated June 8, 1999. Dr. Greene noted a history of appellant's injury on April 18, 1989 and indicated he began to treat appellant in 1993. He noted appellant's right knee condition had gotten progressively worse. Upon physical examination the doctor noted the McMurray's test was positive in the right knee which produced a click which was due to chondromalacia or secondary tracking problems, both as a result of the work injury of June 16, 1987. Dr. Greene diagnosed appellant with right peroneal neuropathy at the level of her distal biceps and fibular head and internal derangement of her right knee consisting of post-traumatic chondromalacia of the patella. He indicated that appellant's condition was a direct result of the work-related injury of June 16, 1987. Dr. Greene recommended arthroscopic surgery.

By merit decision dated November 10, 1999, the Office denied modification of its September 14, 1998 decision on the grounds that the evidence submitted was insufficient to warrant modification.

By letter dated February 15, 2000, appellant requested reconsideration of the Offices' decision dated November 10, 1999. She submitted a narrative statement. Appellant indicated that she did not seek treatment for the period of 1993 to 1997 because she was given a choice by Dr. Greene to either submit to arthroscopic surgery or manage the pain herself. She chose to manage her condition through home therapy.

In a February 25, 2000 decision, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after September 22, 1997 as a result of her April 18, 1989 employment injury.

[4] The order dismissing appeal was Docket No. 99-1505.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[5] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The Office accepts that appellant sustained a lumbosacral strain and right hip contusion in the performance of duty on April 18, 1989. It therefore remains for appellant to establish that her claimed recurrent right leg and right knee conditions are causally related to that injury.

The medical record in this case lacks a well-reasoned narrative from appellant's physician relating appellant's claimed recurrent condition to the April 18, 1989 employment injury. Dr. Greene, in a report dated September 22, 1997, indicated he examined appellant and noted appellant was having knee problems due to an injury and diagnosed her with internal derangement of the right knee. In his reports dated November 13, 1997, July 20, 1998 and June 8, 1999, Dr. Greene opined that that appellant's knee condition on and after September 1997 was a direct result of the April 18, 1989 employment injury. While Dr. Greene's opinion supported causal relationship in a conclusory statement he provided no medical reasoning or rationale to support such statement. There is no "bridging evidence" which would relate the right leg or right knee condition to the accepted employment injury. Dr. Greene makes no mention of "bridging evidence." That is, he does not explain, how over four years following the accepted lumbosacral strain and right hip contusion how appellant developed a right knee condition from the accepted right hip contusion or how the internal derangement of the right knee is causally related to the accepted April 18, 1989 injury.

Additionally, Dr. Greene did not provide an accurate history of appellant's injury as his report dated June 8, 1999 related appellant's recurrence to the June 16, 1987 injury rather than

[5] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

[6] *See Robert H. St. Onge, supra* note 5.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[8] For the importance of bridging information in establishing a claim for a recurrence of disability. *See Robert H. St. Onge, supra* note 5; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 738 (1986).

[9] *See Morris Scanlon,* 11 ECAB 384, 385 (1960).

the April 18, 1989 injury. Further, he describes a fall appellant experienced however the June 16, 1987 injury relates to a pushing and throwing injury.

Other treatment notes from Dr. Greene did not specifically address causal relationship between appellant's accepted employment injuries and her claimed recurrence of disability.

For these reasons, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability or a medical condition beginning on or about September 22, 1997 causally related to her accepted April 18, 1989 employment injury.

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.607(a) of the implementing regulations. Under section 8128(a) of the Act,[10] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with section 10.606(b)(2) of the implementing federal regulations,[11] which provides guidelines for the Office in determining whether an application for reconsideration is sufficient to warrant a merit review;[12] that section also provides that the Office will not review a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision.[13] The Board has held that the imposition of the one-year time limitation period for filing a request for reconsideration is not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.

With regard to when the one-year time limitation period begins to run, the Office's procedure manual states:

> "The one-year [time limitation] period for requesting reconsideration begins on the date of the original [Office] decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following a reconsideration, any decision by the 'Employees' Compensation Appeals Board and any *de novo* decision following action by the Board, but does not include prerecoupment hearing/review decisions."[14]

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b) (1999).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.607(a).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602, para. 3b(1) (May 1996).

The Board has held that Chapter 2.1602.3(b)(1) of the Office's procedure manual should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.[15]

In this case, the Office issued its last merit decision on November 10, 1999. The February 25, 2000 Office decision found that appellant's request for reconsideration dated February 15, 2000 was untimely. However, appellant's request for reconsideration, filed on February 15, 2000, was within one year of the November 10, 1999 merit decision by the Office and was timely.

The Office abused its discretion in denying appellant's request for reconsideration dated February 15, 2000 under section 8128(a) of the Act by not considering the request for reconsideration as timely.

On remand, the Office should treat as timely appellant's February 15, 2000 request for reconsideration, exercise its discretion in determining whether this request is sufficient to warrant a merit review and issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 10, 1999 is affirmed and the decision dated February 25, 2000 is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
June 19, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[15] *Ranjan V. Vora* (Docket No. 90-1304, issued December 18, 1990); *see John W. O'Connor*, 42 ECAB 797 (1991).