U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN WOMACK and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

Docket No. 01-597; Submitted on the Record;
Issued October 10, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On February 23, 1996 appellant, then a 33-year-old carrier, filed a claim alleging that on that same date she injured her left leg when she was dismounting her mail truck and walking to deliver mail. She did not stop work but returned to a limited-duty position.

In support of her claim, appellant submitted various medical records including an x-ray report of the left knee dated February 23, 1996; a treatment note dated February 28, 1996; treatment notes dated May to October 1996 from Dr. Kace A. Ezzet, a Board-certified orthopedic surgeon, and a July 17, 1996 report from Dr. Richard M. Linn, a Board-certified orthopedic surgeon, dated July 17, 1996. The x-ray report of the left knee noted degenerative osteoarthritis, cartilage degeneration and calcification. The treatment note indicated that appellant was being treated for a left knee sprain. The treatment notes from Dr. Ezzet indicated that appellant was being treated for a left knee condition. Dr. Ezzet's May 31, 1996 note indicated that a magnetic resonance imaging (MRI) scan revealed a tear of the anterior cruciate ligament (ACL).

The report from Dr. Linn noted appellant's 20-year history of left knee problems where appellant underwent a medial meniscectomy in 1976 and sustained reinjuries in 1988, 1989 and February 23, 1996. He diagnosed degenerative joint disease, end-stage medial compartment arthrosis of the left knee, anterior cruciate ligament instability of the left knee and status postmedial meniscectomy. Dr. Linn noted that the majority of appellant's symptoms stemmed from her degenerative joint disease.

By letter dated July 20, 1998, the Office requested that appellant submit additional factual and medical evidence to support her claim.

In a decision dated August 27, 1998, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the alleged injury on February 23, 1996, as required by the Federal Employees' Compensation Act.[1]

Thereafter appellant filed a treatment note from Dr. Ezzet dated May 13, 1996, an MRI scan dated May 28, 1996 and two narrative statements. Dr. Ezzet noted appellant's 20-year history of left knee problems including her reinjury on February 23, 1996. He diagnosed degenerative joint disease of the medial compartment of the left knee and 20 years status postopen medial meniscectomy. The MRI scan revealed status post subtotal medial meniscectomy with evidence of fraying or recurrent tearing of the meniscal remnant; Grade IV chrondromalacia; and evidence of complete ACL tear. Appellant's narrative statement's provide a history of her injury and past left knee problems.

By letter dated September 10, 1998, appellant requested a hearing, which was held on April 28, 1999. Subsequent to the hearing appellant submitted additional medical records including an October 1, 1998 report from Dr. Gary J. Kelman, a specialist in orthopedics. Dr. Kelman provided a medical record review of appellant's past injuries including the exacerbation of her condition on February 23, 1996.[2]

By decision dated August 17, 1999, the Office hearing representative found that the evidence was not sufficient to establish that appellant sustained an injury as a result of her work activities of February 23, 1996.

In an August 11, 2000 letter, appellant requested reconsideration of her claim. She submitted various medical records, a November 6, 1989 work certificate prepared by Dr. Thomas Hoffeld, a Board-certified orthopedic surgeon and a treatment note dated February 23, 1996. The November 6, 1989 work certificate noted that appellant would be able to return to work, light duty on November 8, 1989. The treatment note dated February 23, 1996 indicated that appellant was doing well until she sprained her knee while walking on uneven ground. The note indicated a diagnosis of left knee sprain.

By decision dated November 1, 2000, the Office denied appellant's request on the grounds that the evidence submitted was cumulative and thus insufficient to warrant review of the prior decision.

The only decision before the Board on this appeal is the Office's decision dated November 1, 2000. Since more than one year elapsed from the date of issuance of the Office's August 17, 1999 merit decision to the date of the filing of appellant's appeal, January 10, 2001, the Board lacks jurisdiction to review this decision.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] On October 1, 1998 appellant filed a claim alleging that on July 29, 1998 she injured her left leg when on her mail route. However, this claim is not before the Board at this time.

[3] *See* 20 C.F.R. § 501.3(d).

The Board finds that the Office properly denied appellant's request for reconsideration of the merits of her claim.[4]

Under section 8128(a) of the Act,[5] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[6] which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[7]

In this case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was cumulative and insufficient. In support of her request for reconsideration, appellant submitted various medical records from Dr. Ezzet, Dr. Linn and First Med. This evidence was duplicative of evidence already contained in the record,[8] and was previously considered by the hearing representative and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant also submitted a November 6, 1989 work certificate prepared by Dr. Hoffeld and a treatment note dated February 23, 1996. Dr. Hoffeld's note predated appellant's alleged employment injury and is not relevant to the issue of causal relationship of the alleged injury of February 23, 1996 to employment factors. The treatment note contained information cumulative of that already in the record and considered by the Office in its August 17, 1999 decision.[9]

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[4] *See* 20 C.F.R. § 10.606(b)(2)(i-iii)

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b) (1999).

[7] 20 C.F.R. § 10.608(b).

[8] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[9] *Id.*

Appellant neither showed that the Office erroneously applied or interpreted a point of law; nor advanced a point of law not previously considered by the Office. Nor did she submit relevant and pertinent evidence not previously considered by the Office."[10] Therefore, appellant was not entitled to merit review of her claim.

The decision of the Office of Workers' Compensation Programs dated November 1, 2000 is hereby affirmed.

Dated, Washington, DC
October 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

[10] 20 C.F.R. § 10.606(b).