U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Farmington, NM

Docket Nos. 00-334 & 00-844; Submitted on the Record;
Issued September 13, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established a recurrence of disability on or after January 15, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration without merit review of the claim.

The Office has accepted that appellant sustained right shoulder and lumbar strains causally related to her employment duties as a distribution clerk. Appellant accepted a light-duty position in August 1995; on March 24, 1998 she filed a Form CA-7 (claim for compensation on account of traumatic injury or occupational disease) for partial wage loss commencing March 3, 1998.

In a decision dated May 26, 1996, the Office determined that appellant had not established a recurrence of disability. By decision dated November 3, 1998, the Office denied modification of the prior decision. In a decision dated August 27, 1999, the Office determined that appellant's requests for reconsideration were insufficient to warrant merit review. In a decision dated November 8, 1999, the Office reviewed the case on its merits and denied modification.

The Board finds that appellant has not established a recurrence of disability.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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]

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[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

In this case, appellant has asserted that she was forced to work outside her work restrictions on January 14 and 15, 1998, which included answering telephones and taking notes. The employing establishment indicated in a letter dated April 24, 1998 that employees answering rarely had to take notes, since most calls were forwarded. The issue is whether appellant was required to perform specific activities that were outside her stated restrictions, and on this issue there is no supporting evidence. The attending physician, Dr. Robert Quarmby, a physiatrist, had indicated in a duty status report dated August 20, 1997 that appellant could answer telephones and do intermittent typing. There is no probative evidence establishing that activities on January 14 and 15, 1998 were outside any stated restrictions at that time. Appellant has not shown a change in the nature and extent of the light-duty job in this case.

The record indicates that after January 15, 1998 appellant often worked less than eight hours per day; for example, from February 2 to 5, 1998 she worked five hours per day, and in March 1998 she generally worked six hours per day. To establish entitlement to compensation for wage loss, she must submit medical evidence establishing a change in her employment-related condition that rendered her unable to work full time during a specific period. To be of probative value, the medical evidence must contain an opinion, based on a complete factual and medical background, and supported by sound medical reasoning, on disability causally related to the employment injury.[2] The medical evidence from Dr. Quarmby does not provide a reasoned medical opinion supporting appellant's claim in this case. In a report dated January 16, 1998, Dr. Quarmby diagnosed a myofascial pain syndrome, which has not been accepted as employment related. He stated that as the level of work activity increased appellant had increased difficulty with pain control, without further explanation. In a treatment note dated March 2, 1998, Dr. Quarmby stated that appellant was not tolerating eight hours per day, and her work hours would be reduced to six hours per day. Dr. Quarmby does not provide a reasoned opinion showing a change in an employment-related condition that resulted in partial disability for a specific period.

The Board notes that the Office subsequently referred appellant for a second opinion examination by Dr. J. William Wellborn, a physiatrist, with respect to continuing medical treatment. In a report dated June 17, 1998, he diagnosed a chronic right shoulder strain and indicated that appellant could work eight hours with restrictions. His report does not support a recurrence of partial disability on or after January 15, 1998. It is appellant's burden to establish her claim, and the Board finds that she did not meet her burden in this case.

Since appellant requested a review of the August 27, 1999 decision on the appeal docketed as No. 00-334, the Board will review this decision on appeal.

The Board further finds that the Office properly denied merit review in its August 27, 1999 decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office's regulations provides that a claimant may

[2] *Dennis J. Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[3] 5 U.S.C. § 8128(a) (providing that "[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.")

obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[4] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[5]

Appellant submitted a letter dated July 20, 1999 requesting reconsideration, and also submitted an August 3, 1999 report from Dr. Quarmby. In the August 3, 1999 report, Dr. Quarmby discusses Dr. Wellborn's report and the date of maximum medical improvement, without discussing the relevant issues presented on a recurrence of disability. Appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly refused to reopen the case for merit review at that time.

The decisions of the Office of Workers' Compensation Programs dated November 8 and August 27, 1999 are affirmed.

Dated, Washington, DC
September 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[4] 20 C.F.R. § 10.606(b)(2).

[5] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson,* 45 ECAB 430 (1994).