

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of INEZ B. HART and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 00-1933; Submitted on the Record;
Issued April 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she had any disability beginning August 11 to September 15, 1999 causally related to the accepted injury of October 7, 1998; and (2) 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 October 10, 1998 appellant, then a 63-year-old clerk, filed a claim alleging that she sustained a muscle strain to the neck, arm and hand as a result of casing mail. The Office accepted appellant's claim for a cervical strain. Appellant was on light duty since September 16, 1998 due to another work-related injury¹ and as a result of this injury her restrictions were altered to include no overhead reaching.

Accompanying appellant's claim was a physician's first report of occupational injury prepared by Dr. Fred Blackwell, a Board-certified orthopedic surgeon, dated October 7, 1998 and a narrative statement dated October 10, 1998. Dr. Blackwell noted that appellant experienced pain in her neck and hand while performing her employment duties. He diagnosed appellant with a cervical strain and recommended physical therapy for three weeks. Dr. Blackwell noted work restrictions on pushing, pulling or lifting over three pounds and

¹ The record indicates that appellant has another claim before the Office, claim No. A2-13797163, which has been accepted for left elbow epicondylitis and release surgery. On March 10, 2000 the Office informed appellant that her two existing claims, No. A2-13797163 for left elbow epicondylitis and No. A2-131173283 for a cervical spine injury, would not be doubled as the cases were for different conditions. On May 12, 2000 appellant appealed the Office's decision dated December 28, 1999, in claim No. A2-131173283 denying her claim for disability compensation for the period August 11 to September 15, 1999. This appeal is currently before the Board. However, on June 14, 2000 the Office issued a decision denying appellant's claim for a recurrence of her accepted injury in claim No. A2-13797163. The Board and the Office may not have concurrent jurisdiction over the same issue in a case, however, since the cases were not doubled and were treated as separate claims, there is no concurrent jurisdiction. *See Russell E. Herman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

reaching above the shoulder. Appellant's narrative statement noted that she experienced pain in her neck and fingers when casing mail.

Thereafter, appellant submitted treatment notes from Dr. Blackwell dated October 13, 1998 to March 22, 1999, a report from Dr. Mathias Masem, a Board-certified orthopedic surgeon, dated May 4, 1999, a work status report from Dr. B. Ravi Nayak, Board-certified in physical medicine and rehabilitation, dated July 23, 1999 and physical therapy notes. Dr. Blackwell diagnosed appellant with cervicothoracic strain/sprain and noted that appellant continued to experience neck discomfort and occasional exacerbation of her condition. He indicated that appellant continued to be on a modified work status and noted that, in early February 1999, appellant stopped work due to her neck pain, which radiated into her arms. In the physician's note dated February 16, 1999, Dr. Blackwell released appellant to work and noted that he could not reasonably keep her off work any longer. Appellant indicated resistance to return to work at this time. Dr. Blackwell noted that all work restrictions recommended would be accommodated by the employer. He further noted that appellant had significant problems and believed there was an emotional component to her condition. Dr. Blackwell's February 26, 1999 treatment note indicated that appellant still had not resumed working although Dr. Blackwell returned her to work on February 16, 1999. He noted that appellant requested that Dr. Blackwell cover her for that period and he declined indicating that the employer would have accommodated any of the restrictions Dr. Blackwell established but appellant refused to resume work. The report from Dr. Masem dated May 4, 1999, indicated that he originally treated appellant for her left upper extremity condition. Dr. Masem noted that appellant had reached maximum medical improvement with regard to that injury. He diagnosed appellant with cervical strain; bilateral elbow tendinitis and bilateral wrist tendinitis. Dr. Masem noted that there was no evidence of nerve entrapment and indicated that appellant would be better served by a physician who specialized in physical medicine and rehabilitation. The work status report from Dr. Nayak noted that appellant was released to work on July 23, 1999 four hours per day; with restrictions on mail casing; lifting, reaching and bending.

On December 4, 1999 appellant filed a Form CA-7 requesting wage-loss compensation for disability for the period August 11 to September 15, 1999.

Subsequently, appellant submitted duplicate treatment notes from Dr. Blackwell dated October 7, 1998; a work capacity evaluation prepared by him dated October 7, 1998; a patient registration form dated October 7, 1998; a progress note from Dr. Nayak dated November 30, 1999; an attending physician's report from Dr. Nayak dated December 1, 1999 and a work status report dated December 15, 1999. The progress note from the physician dated November 30, 1999, indicated that appellant was being treated for neck and shoulder symptoms. He diagnosed appellant with cervical myofascial syndrome; right arm and wrist tendinitis. Dr. Nayak noted that appellant was released to modified work. The attending physician's report from him dated December 1, 1999, noted a history of appellant's injury indicating that, in September 1998, appellant was casing mail and felt pain in her shoulder, neck and arm. He diagnosed appellant with cervical myofascial pain syndrome; right medial/lateral epicondylitis and right wrist tendinitis. Dr. Nayak noted with a checkmark "yes" that appellant's condition was caused or aggravated by her employment activity. He noted treating appellant on August 17, October 19 and November 30, 1999. Dr. Nayak indicated that appellant's period of total disability from August 11 to September 15, 1999. He noted that appellant was released to work on

September 15, 1999. The work status report dated December 15, 1999, noted permanent restrictions on lifting and casing mail.

In a decision dated December 28, 1999, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed period of disability beginning August 11 to September 15, 1999, was causally related to appellant's accepted injury of October 7, 1998.

By letter dated August 9, 2000, appellant requested reconsideration and submitted additional medical evidence, most of which was duplicative and a new report from Dr. Nayak dated February 14, 2000. He reiterated a history of appellant's work-related injuries beginning in 1986. Dr. Nayak noted that, in September 1998, appellant was performing a limited-duty position casing mail, at which time she experienced pain in her upper extremity and shoulder. He noted upon physical examination that appellant had tenderness over her right cervical paraspinal muscles, right elbow and wrist. Dr. Nayak indicated these findings were consistent with the mechanism of injury to her right upper extremity and neck.

In a decision dated April 5, 2000, the Office denied appellant's request for review on the grounds that the evidence was cumulative and not sufficient to warrant review of the prior decision.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of October 7, 1998.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.²

The Office accepted appellant's claim for cervical strain and paid appropriate compensation. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning August 11 to September 15, 1999 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Appellant's treating physician, Dr. Blackwell, submitted various reports but did not specifically address whether appellant's October 1998 injury caused or aggravated disability during the claimed period at issue, beginning August 11 to September 15, 1999. Dr. Blackwell's treatment notes from October 13, 1998 to March 22, 1999 diagnosed appellant with cervicothoracic strain/sprain. He indicated that appellant continued to be on a modified work status and noted that in early February 1999 appellant stopped work due to her neck pain. In Dr. Blackwell's note dated February 16, 1999, he released appellant to work and informed her that all work restrictions recommended would be accommodated by the employer, however,

² See *Nicolea Bruso*, 33 ECAB 1138 (1982).

appellant refused to return to work at this time due to her condition. Dr. Blackwell indicated that he believed there was an “emotional component” to appellant’s condition. His February 26, 1999 treatment note indicated that appellant still had not resumed working although he returned her to work on February 16, 1999. Dr. Blackwell noted that appellant requested that he cover her for that period and Dr. Blackwell declined indicating that the employer would have accommodated any of the restrictions he established but appellant refused to resume work. Dr. Blackwell’s opinion did not address or support the period of disability at issue, rather suggested that appellant was able to return to modified employment duties. Therefore, these reports are insufficient to meet appellant’s burden of proof.

The reports from Dr. Nayak noted that appellant was still experiencing symptoms of her cervical condition, however, the medical evidence most contemporaneous with the period of disability indicated otherwise. The July 23, 1999 work status report he noted that appellant was released to work on July 23, 1999, four hours per day; with restrictions provided for mail casing, lifting, reaching and bending. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.³ The only other evidence supporting disability during this period was an attending physician’s report from Dr. Nayak dated December 1, 1999, which diagnosed appellant with cervical myofascial pain syndrome; right medial/lateral epicondylitis and right wrist tendinitis. He noted with a checkmark “yes” that appellant’s condition was caused or aggravated by her employment activity. While Dr. Nayak somewhat supported causal relationship in this particular report, he provided no medical reasoning or rationale to support such opinion. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁴

Other reports from Dr. Masem indicated that appellant’s disability status but they did not attempt to explain the relationship between the claimed period of disability and the October 7, 1998 work injury. Rather his report dated May 4, 1999, indicated that appellant had reached maximum medical improvement with regard to her left upper extremity condition. Dr. Masem noted that there was no evidence of nerve entrapment. Therefore, these reports are insufficient to meet appellant’s burden of proof.

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of October 7, 1998. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant’s employment injury.

³ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁴ See *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

The Board further finds that the Office in its April 5, 2000 decision, properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under 5 U.S.C. § 8128.⁵

Under section 8128(a) of the Federal Employees' Compensation Act,⁶ 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,⁷ 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

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(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.⁸

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. Blackwell. This evidence was duplicative of evidence already contained in the record⁹ and was previously considered by the Office and found deficient. Appellant also submitted a February 14, 2000 report from Dr. Nayak. The report from him merely restates Dr. Nayak's medical opinion Dr. Nayak set forth in his report of December 1, 1999. He again noted that appellant was performing a limited-duty position casing mail, at which time she experienced pain in her upper extremity and shoulder. He indicated that the physical findings were consistent with the mechanism of injury to her right upper extremity and neck. However, this information was cumulative of information already in the record and considered by the Office in its December 28, 1998 decision.¹⁰ Therefore, the Office properly determined that this evidence did not constitute a

⁵ See 20 C.F.R. § 10.606(b)(2) (i-iii).

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b) (1999).

⁸ 20 C.F.R. § 10.608(b).

⁹ 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).

¹⁰ *Id.*

basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.”¹¹ Therefore, appellant did not submit relevant evidence not previously considered by the Office.

The April 5, 2000 and December 28, 1999 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 12, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ 20 C.F.R. § 10.606(b).