

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA BAILEY and DEPARTMENT OF THE ARMY,
KARLSRUHE COMMISSARY, Karlsruhe, Germany

*Docket No. 01-2262; Submitted on the Record;
Issued April 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that she suffered a recurrence of disability on March 23, 2000 causally related to an accepted employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in its decisions dated January 8 and July 20, 2001, in denying appellant's request for a merit review.

On June 8, 1993 appellant, then a 31-year-old accounting technician, filed a notice of traumatic injury alleging that her depression and bipolar disorder were caused by factors of her federal employment. The Office accepted appellant's claim for depressive psychosis on January 10, 1994. Appellant received compensation benefits and returned to light-duty work at a different federal agency. On June 2, 1998 appellant filed a claim for recurrence of disability beginning May 5, 1998. When asked to describe how her present condition was related to her original injury, she stated that since she had been under different supervision, people were "selfish, unkind, jealous, unconcern, hateful and no manners," that the work had never been evenly distributed among employees and that her supervisor wanted her to be busy when there was no work.

By letter dated July 10, 1998, the Office advised appellant that since she was claiming new factors of employment, she should file a new claim for occupational disease. The Office noted that appellant was taken out of her original environment in 1993, which was found to have caused or contributed to her accepted emotional condition and placed in a new position under different supervision in May 1997.

Appellant filed a second claim for recurrence beginning March 23, 2000.¹ When asked how the recurrence happened and how it was related to the original injury, she stated:

“The recurrence happened when I began to get comfortable with a new position that I enjoyed working and assisting customers with the for other transaction. I became very concerned and dedicated to my work that described for me with my illness. Relationship to first recurrence is the same as the statements above.”

Appellant submitted a letter from a psychiatric nurse practitioner indicating that she was bipolar and that her behavior on March 23, 2000 was typical of a manic episode. By letter dated July 13, 2000, the Office informed appellant that she should file a new occupational disease claim.

By decision dated October 31, 2000, appellant’s claim for recurrence of disability was denied since appellant alleged new work factors and was working for a different agency. The Office also noted that appellant had been placed on administrative leave beginning March 23, 2000, as a result of her own misconduct.

By letter dated December 18, 2000, appellant requested reconsideration. She submitted a letter from her congressman and stated that she would like the Office to request information from her treating physician. By decision dated January 8, 2001, appellant’s request for reconsideration was denied.

By letter dated June 14, 2001, appellant requested reconsideration. She submitted a July 2, 2001 report from her treating physician, Dr. Seth A. Pope, a Board-certified psychiatrist and a personal statement. Dr. Pope diagnosed appellant with bipolar disorder and stated that her most recent problems at work were caused by a “decompensation in her illness.” By decision dated July 20, 2001, appellant’s request for reconsideration was denied.

The Board finds that appellant has not established that she sustained a recurrence of disability causally related to her accepted employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disabilities, for which she claims compensation are causally related to the accepted injury.² 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 and supports that conclusion with sound medical reasoning.³

¹ Appellant’s agency indicated that appellant had been placed on administrative leave beginning March 23, 2000, due to a workplace disturbance.

² *Jose Hernandez*, 47 ECAB 288 (1996).

³ *Id.*

In this case, appellant's original condition was accepted for depressive psychosis as a result of her employment as an accounting technician in Karlsruhe, Germany in 1993. Appellant moved back to the United States and started working for a different federal agency in 1997. Her claim for recurrence of disability was filed in March 2000, when she was working in a new position and under new supervision. A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused illness.⁴ In this case, appellant did have new exposures in her work environment since she was taken out of her original environment and placed in a completely different agency under different supervision. Her claim does not meet the definition for recurrence since there were intervening factors between her present condition and her original accepted injury in 1993. Also, when appellant filed her claim for recurrence on Form CA-2a, she did not explain how and when the recurrence happened or how it was related to the original injury. She stated:

“The recurrence happened when I began to get comfortable with a new position that I enjoyed working and assisting customers with the for other transaction. I became very concerned and dedicated to my work that described for me with my illness. Relationship to first recurrence is the same as the statements above.”

Appellant's statement is unclear and does not reveal how and when the alleged recurrence happened, or why she believes her current condition is related to her originally accepted injury. The Office informed appellant that her “statement does not make sense” and advised her to explain what she meant by the statement. Appellant did not provide any further explanation to the Office. Since there were intervening factors between appellant's originally accepted injury and her claimed recurrence and since appellant did not in fact explain how the alleged recurrence happened, the Board finds that appellant did not meet her burden of proof to establish a claim.

The Board further finds that the Office did not abuse its discretion in its January 8, 2001 decision in denying appellant's request for a merit review.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁶

⁴ 20 C.F.R. § 10.5(x).

⁵ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁶ 20 C.F.R. § 10.608(a).

In this case, appellant submitted a letter from her congressman with her December 18, 2000 request for reconsideration. She also stated that she would like the Office to request information from her treating physician. Appellant did not submit any new or relevant evidence with her request, nor did she raise any legal arguments or show that the Office erred in their decision. Since appellant did not meet at least one of the above criteria required by the Office to obtain a merit review, she did not meet her burden of proof.

The Office also did not abuse its discretion in its July 20, 2001 decision by denying a merit review.

In support of her June 14, 2001 request for reconsideration, appellant submitted a July 2, 2001 report from her attending physician, Dr. Pope, whose report, diagnosing appellant with bipolar disorder, is not relevant to the underlying issue in this case since appellant's claim in 1993 was only accepted for depressive psychosis. He provides a new diagnosis of bipolar disorder and does not relate appellant's current condition to the original condition accepted by the Office. Dr. Pope also does not relate appellant's current diagnosis to any of the original work factors in 1993, which the Office found caused or contributed to appellant's accepted condition. Since Dr. Pope's report does not address the accepted condition of depressive psychosis and the original work factors, it is insufficient evidence to reopen appellant's case for a merit review.

Appellant has not established that the Office abused its discretion in its January 8 and July 20, 2001 decisions by denying her request for review on the merits because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The July 20 and January 8, 2001 and October 31, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 24, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member