U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TINA I. PEELER and U.S. POSTAL SERVICE, SOUTH SUBURBAN PROCESSING & DISTRIBUTION CENTER, Bedford Park, IL

Docket No. 01-2079; Submitted on the Record;
Issued August 9, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she was totally disabled from April 15, 2000 to April 27, 2001 by an employment-related condition; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On January 12, 1988 appellant, then a 30-year-old letter sorting machine operator, filed a claim for an occupational disease for bilateral carpal tunnel syndrome. This condition and flexor tendinitis were accepted by the Office as related to appellant's employment duties and the Office paid compensation for disability for work until appellant's return to limited duty on July 20, 1993 and also paid a schedule award for a 25 percent permanent loss of use of each hand.

On January 30, 2000 appellant, who was then working as a small parcel bundle sorter, filed a claim for a traumatic injury occurring on January 17, 2000 when she experienced sharp pain in her left shoulder and left neck areas while keying. She listed the nature of the injury as "strain to the left shoulder, neck, elbow radiating to left hand." Appellant stopped work on January 23, 2000 and returned to work on January 31, 2000, using 40 hours of annual leave. The position to which she returned consisted of work on the nixie table to prepare mail for processing on the manual letter cases, with a lifting limit of one pound.

In notes and a report dated January 27, 2000, Dr. Pamela Pope, a Board-certified internist, stated that appellant had severe pain in her left neck and shoulder after working on the small parcel bundle sorting machine for 45 minutes on January 17, 2000. Dr. Pope diagnosed left shoulder strain and stated that appellant should restrict the use of her left arm and hand to lifting no greater than one pound.

By letter dated February 15, 2000, the Office advised appellant that it had accepted that she sustained a left shoulder strain on January 17, 2000, that she could receive continuation of pay or compensation if her injury resulted in disability for work and that she needed to provide a detailed narrative medical report from her attending physician.

In a report dated March 3, 2000, Dr. Tomas E. Nemickas, a Board-certified orthopedic surgeon, noted appellant's history of carpal tunnel syndrome and tendinitis, and of an acute onset of left shoulder pain while working as a small package sorter. Dr. Nemickas diagnosed left shoulder impingement and multidirectional instability, and stated that he had sent her to physical therapy and planned to inject her left shoulder. He stated:

> "In the interim I have given her limited duty left upper extremity at work as apparently she is quite resistant to repetitive motion with significant exacerbation during examination of the parascapular spasm. Until we elevate this information and increase her mobility, I have recommended that she lift less than five pounds of lifting, carrying, pushing, pulling, with limited nonrepetitive or continued motion of the left upper extremity."

On April 17, 2000 appellant accepted an employing establishment offer of a limited-duty position performing manual letter distribution, with a limitation against pushing, pulling, lifting or carrying more than five pounds.

In a report dated July 3, 2000, Dr. James D. Schlenker, a Board-certified hand surgeon, stated that, based on his examination that day, appellant had residual carpal tunnel syndrome, but that he was "not certain whether or not she can perform her regular activities." In a report dated July 6, 2000, Dr. John M. Sia, an internist, indicated that appellant could perform "no work involving heavy, repetitive use of hands." An electromyogram on October 3, 2000 showed borderline carpal tunnel syndrome.

Appellant submitted several reports from Dr. James Schiappa, an orthopedic surgeon. In a report of appellant's first office visit on November 21, 2000, Dr. Schiappa noted that appellant was complaining of pain to the left shoulder after an injury in January; Dr. Schiappa found decreased shoulder motion on examination and diagnosed cervical spine strain and left shoulder pain. In a November 21, 2000 report on an Office form, he diagnosed bilateral carpal tunnel syndrome, indicated the condition was related to repetitive work and stated that appellant should refrain from all work duties until her next appointment. In another November 21, 2000 report on an Office form, Dr. Schiappa diagnosed left shoulder strain and stated that appellant should refrain from all work and have a magnetic resonance imaging (MRI) scan to rule out a rotator cuff tear. Reports from Dr. Schiappa dated January 12, 2001 were essentially the same as his November 21, 2000 reports on Office forms.

In a report dated January 11, 2001, Dr. Schiappa diagnosed bilateral carpal tunnel syndrome, noted that appellant still had complaints of tingling and tenderness to both wrists, and stated that appellant was to refrain from all work duties until further notice. In a February 2, 2001 report on an Office form, Dr. Schiappa diagnosed carpal tunnel syndrome, sprain of neck and shoulder pain, and stated that appellant should refrain from all work duties.

On February 2, 2001 appellant filed claims for compensation for all periods from March 18, 2000 to January 19, 2001. Employing establishment records show appellant was on leave without pay from March 18 through April 14, 2000; worked from April 15 through 24, 2000, working 8 hours on 2 days and using leave in amounts from .47 to 2.12 hours on the other days; used sick leave from April 27 through May 1, 2000; worked 5.42 hours on May 4, 2000; was on leave without pay from May 5 through 8, 2000; with the exception of May 18, 2000 worked from May 11 through 21, 2000, working 8 hours on 1 day and using leave or leave

without pay in amounts of .39 to 4.81 hours on the other days; and stopped working on May 22, 2000.

By letter dated February 21, 2001, the Office advised appellant that there was no medical documentation of disability from March 18 to November 21, 2000, and that the Office forms from her physician dated November 21, 2000 through January 19, 2001 stated that she was totally disabled but did not contain any medical reasoning based on objective findings and were therefore not sufficient to justify payment of her claim for compensation.

On February 17, 2001 appellant submitted a claim for compensation for the period from January 19 to February 16, 2001. She submitted January 25 and February 20, 2001 reports from Dr. Schiappa diagnosing bilateral carpal tunnel syndrome and left shoulder pain, and stating that appellant was to refrain from all work duties until further notice.

In a letter dated March 20, 2001, appellant stated that her work history for April 17 to May 22, 2000 reflected "a failed attempt at being able to complete a full 40-hour, work week, due to the daily increase in pain, with each attempt to drive my car to work, on the days that I could make it to work. By May 22, 2000 it was apparent that I was causing myself more pain and possibly more damage, by attempting to work in my present physical state."

Appellant submitted results of a February 23, 2001 left shoulder MRI scan, which showed hypertrophic spurring of the acromioclavicular joint with mild impingement of the supraspinatus muscle, and findings suggestive of either a partial tear of the supraspinatus tendon or supraspinatus tendinitis. She also submitted a March 1, 2001 report from Dr. Schiappa stating that appellant complained of pain in her left shoulder, that an MRI scan was positive for mild impingement, that surgery was discussed and that appellant was to refrain from all work duties until further notice.

By decisions dated April 10, 2001, the Office found that the reports from Dr. Schiappa did not contain an acceptable medical explanation for total disability and that appellant had not submitted acceptable medical evidence of disability from April 15, 2000 to February 16, 2001 due to her accepted left shoulder strain and bilateral carpal tunnel syndrome.

From March 2 to April 27, 2001 appellant submitted claims for compensation for February 17 to April 27, 2001. By letter dated May 18, 2001, the Office advised appellant that she needed to submit a medical report containing a detailed description of her objective findings and an explanation why she was temporarily totally disabled after she was released to limited duty on March 30, 2000. Appellant submitted a May 17, 2001 report from Dr. Schiappa stating that she was doing the same, that she complained of pain in her left shoulder, that x-rays showed no new pathology and that she should refrain from all work duties until further notice.

By letter dated April 30, 2001, appellant requested reconsideration of the Office's April 10, 2001 decisions, contending that the Office misinterpreted the medical evidence.

By decision dated June 21, 2001, the Office found that appellant's request for reconsideration was insufficient to warrant review of its prior decisions.

By decision dated July 10, 2001, the Office found that reports from Dr. Schiappa did not contain an acceptable medical explanation for total disability and that appellant had not

submitted acceptable medical evidence of disability from February 17 to April 27, 2001 due to her accepted left shoulder strain and bilateral carpal tunnel syndrome.

The Board finds that appellant has not established that she was totally disabled from April 15, 2000 to April 27, 2001 by an employment-related condition.

For each period of disability claimed, appellant has the burden of proving by a preponderance of the reliable, probative and substantial evidence she was disabled for work as a result of an employment injury.[1] Whether a particular injury cause an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[2] When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a basis for payment of compensation.[3]

The medical evidence submitted by appellant is not sufficient to meet her burden of proof. Dr. Pope indicated, in January 27, 2000 reports, that appellant could perform limited duty and on January 31, 2000 appellant returned to work in a limited-duty position that complied with Dr. Pope's lifting limitation of one pound. In a March 3, 2000 report, Dr. Nemickas, a Board-certified orthopedic surgeon, indicated that appellant could perform limited duty with lifting up to five pounds. On April 17, 2000 appellant accepted a limited-duty position complying with Dr. Nemickas' limitations. There is no medical evidence indicating that appellant was disabled for her limited-duty positions when she stopped work on March 18, 2000 or beginning May 22, 2000, the day after she last worked.

The earliest report indicating that appellant was totally disabled for work was a November 21, 2000 report from Dr. Schiappa, an orthopedic surgeon, who thereafter submitted periodic reports indicating that appellant should refrain from all work. These reports are not sufficient to meet appellant's burden of proof. They show no awareness that appellant was performing limited duty with maximum lifting under five pounds, contain few findings on physical examination and, most importantly, provide no explanation of how appellant's borderline carpal tunnel syndrome or her left shoulder pain would prevent her from performing her limited-duty position. While appellant's accepted conditions of carpal tunnel syndrome and left shoulder strain could result in disability for work, this does not obviate the necessity of submitting medical evidence explaining why these conditions are disabling for work, especially where earlier medical reports indicated that appellant could work even though she had these conditions and where appellant did in fact work with these conditions.

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

[1] *David H. Goss*, 32 ECAB 24 (1980).

[2] *Edward H. Horton*, 41 ECAB 301 (1989).

[3] *John L. Clark*, 32 ECAB 1618 (1981).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

Appellant did not submit any new evidence with her April 30, 2001 request for reconsideration. She also did not show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. As illustrated by the Board's decision on the merits of appellant's claim, appellant's contention that the Office misinterpreted the medical evidence has no reasonable color of validity.[4]

The July 10, June 21 and April 10, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 9, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

[4] *See John F. Critz*, 44 ECAB 788 (1993).