

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADA J. McKINSIE and U.S. POSTAL SERVICE,
POST OFFICE, Pearl River, LA

*Docket No. 02-471; Submitted on the Record;
Issued August 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant established that she sustained a recurrence of disability on May 8, 2001, causally related to her January 5, 1989 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.608.

On January 5, 1989 appellant, then a 31-year-old distribution clerk, was robbed at gunpoint on the employing establishment's premises. The Office accepted her claim for anxiety disorder and awarded her appropriate wage-loss compensation. Additionally, the Office accepted that appellant sustained a recurrence of total disability on September 18, 1995. She returned to work on February 14, 2000 as a modified distribution clerk and continued to work in that capacity until July 3, 2000. The Office resumed payment of wage-loss compensation effective July 3, 2000. On April 23, 2001 appellant returned to work as a modified distribution clerk.

Appellant ceased work on May 8, 2001 and alleged that she sustained a recurrence of disability causally related to her previously accepted employment injury of January 5, 1989. In a letter dated May 31, 2001, she described an April 26, 2001 discussion regarding her reluctant acceptance of a position as a modified distribution clerk. Appellant stated that one of the participants in the discussion spoke to her in a rude manner. She further stated that the incident upset her "so badly [that her] hair began to come out in chunks."

In a decision dated June 29, 2001, the Office denied appellant's claim for recurrence of disability on the basis that the evidence of record failed to support a recurrence of total disability as alleged.

Appellant requested reconsideration on July 11, 2001 and submitted additional medical evidence as well as a completed Form CA-2a. By decision dated August 28, 2001, the Office denied modification of its June 29, 2001 decision.

On December 21, 2001 appellant requested reconsideration. In a decision dated December 26, 2001, the Office denied her request without reaching the merits of her claim.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on May 8, 2001, causally related to her January 5, 1989 employment injury.

A recurrence of disability is defined as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹

In her May 31, 2001 letter, appellant described an April 26, 2001 employment incident wherein she was allegedly spoken to in a rude manner. She stated that the April 26, 2001 incident upset her “so badly [that her] hair began to come out in chunks.”

In her July 11, 2001 Form CA-2a, appellant described the circumstances of her recurrence as follows: “[m]y case worker was pressuring me; I suffered with a severe paranoid attack resulting in losing my hair. All my problems are related to the [employing establishment].” Appellant further explained that she “had a conflict with her supervisor and had to be [taken] by ambulance to the hospital, which [resulted] in a [hiatal] hernia attack. As a result of having a conflict with [the employing establishment] there was a spot of ulcer. As a conflict with a case worker, my hair fell out.”

In both her May 31, 2001 letter and subsequent Form CA-2a dated July 11, 2001, appellant described new employment incidents that purportedly caused her recurrence of disability. Her July 11, 2001 reference to a “conflict with her supervisor” that required her to be taken by ambulance to the hospital was also reported on a December 19, 1997 Form CA-2a. The latter Form CA-2a similarly included the statement that “[a]s a results (sic) of having a conflict with [the employing establishment there] (sic) was a spot of ulcer.” Appellant’s current supervisor denied any conflict with her and further indicated that appellant was never taken from the employing establishment by any medical ambulatory means.

The record indicates that appellant was reluctant to return to the employing establishment because of alleged prior conflicts with employee’s assigned there. She also expressed reluctance to sign the modified distribution clerk job offer because it was designated as a part-time flexible position, despite the fact that the narrative description clearly indicated that appellant would work 40 hours per week, Monday through Friday. Appellant accepted the position on April 26, 2001 with the noted caveat “[p]ending and (sic) Equal Employment Opportunity for part-time flexible.”

Cynthia P. Staes, an employing establishment human resources specialist, is the individual who was purportedly rude to appellant during an April 26, 2001 meeting, which was convened to discuss appellant’s acceptance or refusal of the offered position. Ms. Staes was not physically present at the meeting, but was able to participate via teleconference. She advised appellant, among other things, that if appellant did not provide a written acceptance of the

¹ 20 C.F.R. § 10.5(x).

offered position, she would not be allowed to continue working.² Appellant was further advised that she could accept the position under protest and write comments at the bottom of the page, which she ultimately did.

As previously indicated, a recurrence of disability is defined as “an inability to work after an employee has returned to work, caused by a *spontaneous change* in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”³

Based on appellant’s account, her May 8, 2001 recurrence of disability was not caused by a “spontaneous change” in her medical condition, but due in part to incidents previously reported on her December 19, 1997 Form CA-2a as well as a more recent incident on April 26, 2001. To the extent the alleged new exposures to the work environment caused appellant’s current disability, a claim for recurrence of disability cannot be established. Furthermore, the medical evidence does not establish that appellant’s current disabling condition is causally related to her January 5, 1989 employment injury. Appellant’s psychiatrist, Dr. Serge Celestin, noted in a July 19, 2001 report that “the stress at work was unbearable resulting in significant hair loss noted by May 8, 2001,” whereupon he suggested that appellant take some time off work. In a report dated July 11, 2001, appellant’s psychologist, Dr. Beverly A. Stubblefield, noted that “efforts to return [appellant] to work, last year and this year, have resulted in retraumatization due to interpersonal conflicts in the workplace where [she] was assigned.” Both Drs. Celestin and Stubblefield suggested that appellant’s current disability was due to additional stressors she experienced in the workplace upon her return to limited duty and not the result of a spontaneous change in her medical condition. Accordingly, appellant failed to establish that she sustained a recurrence of disability on May 8, 2001, causally related to her January 5, 1989 employment injury.

The Board also finds the Office properly exercised its discretion in refusing to reopen appellant’s case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

² Although appellant had not formally accepted the offered position as of April 26, 2001, she returned to work on April 23, 2001.

³ 20 C.F.R. § 10.5(x) (emphasis added).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

Appellant's December 21, 2001 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted additional reports dated December 4, 2001 from Drs. Celestin and Stubblefield. Both doctors completed the Form CA-20. Dr. Stubblefield diagnosed post-traumatic stress disorder with recurrent paranoia and explained that appellant cannot work with people due to extreme anxiety and paranoia she experiences each time she interacts with the public. Additionally, Dr. Stubblefield stated that each time appellant feels threatened, whether real or imagined, there is a recurrence of anxiety and paranoia. Dr. Celestin similarly diagnosed post-traumatic stress disorder, along with depression and paranoia. He further commented that paranoia and anxiety prevent appellant from interacting with the public. While Drs. Celestin and Stubblefield expressed the opinion that appellant's condition was caused or aggravated by an employment activity, neither physician attributed appellant's claimed recurrence of disability on May 8, 2001 to her prior injury of January 5, 1989.⁶ As the recent reports do not offer any additional insight on the alleged causal relationship between appellant's January 5, 1989 employment injury and her recurrence of disability on May 8, 2001, they are cumulative in nature.⁷ Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's December 21, 2001 request for reconsideration.

⁶ Dr. Celestin merely checked the "yes" box in response to the question of whether he believed the condition found was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. *Lee R. Haywood*, 48 ECAB 145, 147 (1996).

⁷ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The decisions of the Office of Workers' Compensation Programs dated December 26 and August 28, 2001 are hereby affirmed.

Dated, Washington, DC
August 26, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member