

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KELLY R. REAMS and U.S. POSTAL SERVICE,
POST OFFICE, Castle Rock, WA

*Docket No. 02-357; Submitted on the Record;
Issued December 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant established an employment-related disability commencing July 28, 2000; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

On April 4, 2000 appellant, then a 37-year-old rural carrier associate, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained bilateral epicondylitis causally related to her federal employment. The reverse of the claim form reports that appellant stopped working on April 8, 2000, and returned to work April 19, 2000.

In a narrative statement dated April 4, 2000, appellant reported that she began to experience elbow pain in the spring of 1999, while she was employed as a distribution clerk. According to an April 5, 2000 statement from appellant's supervisor, appellant worked as a distribution clerk until January 2000, when she was hired as a rural carrier associate.

On July 7, 2000 the Office accepted the claim for bilateral lateral epicondylitis. The Office advised appellant that lost time from work could be claimed by filing a CA-7 claim for compensation. The record indicates that, on August 31, 2000, appellant completed a Form CA-7 claiming compensation from July 28 to August 15, 2000.

By decision dated March 8, 2001, the Office determined that appellant had not established a recurrence of disability commencing July 28, 2000.

In an undated letter received by the Office on June 11, 2001, appellant requested reconsideration. She indicated that documents submitted to the employing establishment regarding compensation as of April 4, 2000 had not been forwarded to the Office in a timely manner.

By decision dated August 16, 2001, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

The Board finds that, based on the evidence before the Office at the time of the March 8, 2001 decision, appellant had not established an employment-related disability commencing July 28, 2000.

The statement of accepted facts prepared on July 7, 2000 indicated that appellant had returned to light-duty work. The only claim for compensation received by the Office prior to March 8, 2001 was a Form CA-7 claiming compensation as of July 28, 2000. The Office had requested that appellant submit a Form CA-7 to claim compensation for wage loss; since appellant had returned to work prior to July 28, 2000, however, a Form CA-7 would normally be appropriate after the filing of a notice recurrence of disability (Form CA-2a).¹ The Form CA-7 was considered to be a claim for a recurrence of disability in this case. It is appellant's burden of proof to establish a recurrence of disability due to her accepted employment injury.²

In a treatment note dated July 27, 2000, Dr. Willis Peacock, an occupational medicine specialist, indicated that appellant had some discomfort on supination and pronation of the elbows, but was making excellent progress. In a note of the same date, Dr. Peacock indicated that appellant could work with restrictions that included minimal repetitive lifting over 10 pounds, and no repetitive gripping or bending of the wrists. Dr. Peacock does not discuss causal relationship with employment or otherwise provide a reasoned medical opinion establishing an employment-related disability commencing July 28, 2000.

The Board further finds, however, that the evidence received after March 8, 2001 was sufficient to require a merit review of the claim.

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 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) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not

¹ The Office procedure manual states that, when a recurrence of disability has been accepted, the employee should submit Form CA-7 to claim compensation. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.8 (July 2000).

² 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. *Terry R. Hedman*, 38 ECAB 222 (1986).

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").

⁴ 20 C.F.R. § 10.606(b)(2).

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

On March 19, 2001 the Office received a Form CA-7 dated July 24, 2000, claiming compensation as of April 4, 2000. Appellant also submitted detailed information regarding the dates she actually had returned to work; she indicated that she worked on April 22 and 29, 2000, intermittent dates in May 2000, and stopped working June 10, 2000. In addition, appellant submitted a statement dated March 15, 2001 from her supervisor, stating that appellant had not been offered light or limited duty from April 4 to August 15, 2000.

The evidence submitted clearly constitutes new and relevant information. The prior decision had been based on a finding that appellant had returned to light duty, that light duty continued to be available, and that appellant was claiming a recurrence of disability as of July 28, 2000. The new evidence indicates that appellant was claiming compensation for intermittent dates from April 4, 2000, and that appellant had not worked light duty, nor was light duty available. The Office should have issued a decision of the merits of the claim, identifying the proper issues and making appropriate findings. The case will be remanded to the Office for an appropriate merit decision on appellant's entitlement to compensation for wage loss for the claimed dates from April 4 to August 15, 2000. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated March 8, 2001 is affirmed. The decision of the Office dated August 16, 2001 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
December 10, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

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