

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GERALDINE E. JACKSON and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Baltimore, MD

*Docket No. 00-1242; Submitted on the Record;  
Issued February 4, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Office accepted appellant's claim for a lumbosacral strain. Appellant had incidents of sharp back pain outside of work on September 7, 1988 and February 9, 1989. She had gynecological problems and a psychiatric condition for which she filed workers' compensation claims which were denied. The Office accepted that appellant sustained recurrences of disability for her back on March 15 and November 30, 1990. Appellant was currently working part time.

On March 4, 1996 on C8 forms, appellant sought compensation for continuing disability from January 28 through March 2, 1996. In response to the Office's request for additional information, by letter dated March 20, 1996, appellant stated that, while standing in front of the bathtub enclosure, she slid the enclosure door to the left using her left hand and felt severe, excruciating pain in her back. In a medical report dated March 28, 1996, appellant's treating physician, Dr. Ali J. Afrookteh, a Board-certified internist, stated that appellant developed recurrent, acute severe episode of back pain while coming out of the shower on January 27, 1996. Dr. Afrookteh stated that appellant had an acute exacerbation of her chronic low back pain which was severe, with recurrent right leg sciatica.

By decision dated July 24, 1996, the Office determined that appellant's back condition was due to an independent, intervening cause and therefore appellant did not establish that the claimed recurrence of disability was causally related to the June 25, 1987 employment injury. By letter dated August 8, 1996, appellant requested an oral hearing before an Office hearing representative which was held on June 11, 1997.

By decision dated August 14, 1997, the Office hearing representative affirmed the Office's July 24, 1996 decision.

By letter dated August 11, 1998, appellant requested reconsideration of the Office's decision.

By decision dated January 21, 1999, the Office denied appellant's request for reconsideration, stating that it received appellant's letter requesting reconsideration on August 19, 1998, more than a year after the Office's August 14, 1997 decision and therefore it was untimely. The Office found that appellant did not establish clear evidence of error.

Appellant appealed the Office's decision to the Board. By order granting remand dated September 28, 1999, the Board determined that appellant's letter requesting reconsideration was dated and postmarked within a year of the Office's August 14, 1997 decision and therefore set aside the Office's January 21, 1999 decision and remanded the case for the Office to make the appropriate decision pursuant to 5 U.S.C. § 8128(a).

Appellant submitted medical evidence in support of her request consisting of duty status reports (Form CA-17) and disability notes from Dr. Afrookteh dated June 18, August 28 and November 6, 1997, June 3, August 4 and October 9, 1998 and April 2, 1999, respectively, progress notes dated from August 5 through October 23, 1998, an unsigned medical report dated March 18, 1997 and medical reports from Dr. Afrookteh, dated November 6, 1997, August 21 and November 6, 1998, and March 16, 1999. The unsigned March 18, 1997 medical report stated that a magnetic resonance imaging (MRI) scan would be obtained and that appellant had pelvic pain over last four to five days especially in her left buttocks and posterior thigh. In duty status reports dated June 18 and November 6, 1997 and June 3, 1998, Dr. Afrookteh diagnosed chronic recurrent back pain and prescribed four hours of work with lifting, standing and sitting restrictions. In his November 6, 1997 report, Dr. Afrookteh stated that appellant had a history of chronic right lower back pain with right leg sciatica secondary to a traumatic injury at her workplace on June 25, 1987. He stated that she had several exacerbations over the past year which required physical therapy. Dr. Afrookteh reiterated his prescription of four hours of work with restrictions.

In his August 4, 1998 disability note, Dr. Afrookteh diagnosed acute exacerbation of back pain and prescribed physical therapy. In his August 21, 1998 report, he described a flare-up of appellant's back pain which occurred three days prior to her visit with him on August 4, 1998 visit when got up from a chair, took a step and felt severe pain in her low back radiating down into her right leg which prevented her from working. Dr. Afrookteh stated that appellant had improved since that visit and could return to her light-duty part-time work on August 24, 1998. The progress notes dated from August 5 through October 23, 1998 document that appellant had ongoing treatment of for her low back pain. In his October 9, 1998 disability note, Dr. Afrookteh stated that appellant had an exacerbation of chronic back pain which rendered her totally incapacitated from her work from September 8 through October 9, 1998. In another note dated October 9, 1998, Dr. Afrookteh stated that appellant had an acute exacerbation of chronic low back pain and prescribed physical therapy.

In his April 2, 1999 duty status report, Dr. Afrookteh reiterated that appellant should work four hours a day with restrictions. In his report dated March 16, 1999, he stated that appellant presented to him on September 23, 1998 with an acute flare-up of left-sided back pain in the lumbar area starting on September 17, 1998. Dr. Afrookteh stated that appellant was unable to work due to the severe pain and, based on a physical examination, he diagnosed acute exacerbation of chronic lower back pain centered on the left side. Dr. Afrookteh prescribed physical therapy and when appellant saw him on October 9, 1998, she had significantly improved. He released her to return to work on October 10, 1998 which appellant did and on December 2, 1998 appellant was free of pain. Dr. Afrookteh reiterated that she should work four

hours with restrictions. Appellant also submitted a claim for a recurrence of disability dated February 16, 1999 in which she left blank the dates of the recurrence of disability and the original injury and stated that she had a history of chronic right low back pain with right leg sciatica secondary to a traumatic injury at her place of employment on June 25, 1987. She did not state the hours she missed from work, if any.

By decision dated December 22, 1999, the Office denied appellant's reconsideration request.

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

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed the appeal with the Board on January 12, 2000, the only decision before the Board is the Office's December 22, 1999 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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.<sup>2</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup>

In her request for reconsideration, appellant argued that the Office erred in determining that the bathroom incident on January 27, 1996 was an intervening injury. Rather, appellant contended that Dr. Afrookteh opined in several reports that her medical condition and disability from January 28 through March 3, 1996 were causally related to her June 25, 1987 employment injury. Appellant contended that the Office had the burden to prove that her disability had ceased and was no longer due to the residuals of the June 25, 1987 employment injury and the Office had not met its burden. She contended that the medical evidence in the record established that she sustained a work-related recurrence of disability for the relevant time period.

Appellant previously argued that the medical evidence, particularly the reports of her treating physician, Dr. Afrookteh, established that she sustained an aggravation or exacerbation on January 27, 1996 during the bathtub door incident and that the incident was not an intervening cause. She also previously argued that the medical evidence established that she had a recurrence of disability on January 27, 1996. Appellant therefore did not raise any new legal argument.

---

<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> Section 10.606(b)(2)(i-iii).

<sup>3</sup> Section 10.608(a).

Appellant submitted new medical evidence consisting of medical reports, disability notes and duty status reports from Dr. Afrookteh dated from June 18, 1997 through March 16, 1999, progress notes dated from August 5 through October 23, 1998, and an unsigned medical report dated March 18, 1997. Although, Office did not specifically address this evidence, none of the evidence appellant submitted establishes that she sustained recurrences of disability on particular dates related to her employment. In his work duty status reports dated from June 18, 1997 through April 2, 1999, Dr. Afrookteh consistently stated that appellant should work four hours a day with restrictions. His disability notes and narrative reports dated from November 6, 1997 report through March 16, 1999 indicate that appellant had exacerbations of her back problem, particularly on September 17 or 18, and August 4, 1998 but they do not contain a rationalized medical opinion explaining how these exacerbations related to her June 25, 1987 employment injury. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.<sup>4</sup> The progress notes dated from August 5 through October 23, 1998 and the unsigned March 18, 1997 report similarly contain no rationalized medical opinion on causation. The medical evidence appellant submitted is not relevant because it does not address causation with the necessary medical rationale. Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, she has failed to establish her claim. The Office acted within its discretion in denying appellant's request for reconsideration.

The December 22, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 4, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

---

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313, 316 (1999); *Helen K. Holt*, 50 ECAB 279, 282 (1999).