U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY F. PENDLETON and U.S. POSTAL SERVICE,
POST OFFICE, Bowling Green, KY

Docket No. 01-913; Submitted on the Record;
Issued June 3, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On March 31, 1997 appellant, then a 43-year-old letter carrier, filed a claim for a back condition which she related to working heavy mail volume and excessive twisting, turning, reaching and lifting. The employing establishment indicated that appellant stopped working on June 25, 1996 for a hysterectomy but had not returned, complaining of back pain. In a June 17, 1997 decision, the Office denied appellant's claim on the grounds that she had not established, through rationalized medical evidence, that she had sustained an injury due to her employment.

On July 14, 1997 appellant requested reconsideration. Appellant submitted reports from a magnetic resonance imaging (MRI) scan that showed a probable small disc protrusion at T8-9, minimal degenerative disc findings at L3-4 and mild degenerative changes at L5-S1 with a mild proterolateral disc herniation to the right. In a June 3, 1997 report, Dr. Timothy P. Schoettle, a Board-certified neurosurgeon, stated that appellant had degenerative changes in the lumbar and thoracic spine, more than would be expected for a woman her age and general medical condition. He stated that appellant's repetitive work activities for the prior nine years had, within a reasonable degree of medical probability, aggravated and accelerated the degenerative processes in her thoracic and lumbar spine to the point that she had daily subjective symptoms and had objective evidence of disc abnormalities on the MRI scans. He concluded that, as a result, appellant had permanent work restrictions.

In an August 29, 1997 decision, the Office vacated its June 17, 1997 decision and accepted appellant's claim for aggravation of herniated discs at T8-9 and L5-S1. The Office paid temporary total disability compensation, retroactive to September 18, 1996.

Appellant returned to limited-duty work on November 24, 1997, after accepting a limited-duty offer from the employing establishment. The work restrictions of the position were no lifting, pulling or pushing over 35 pounds, sitting and standing intermittently for 4 hours a

day, intermittent walking 1 to 2 hours a day, intermittent climbing, kneeling, bending, limited twisting, intermittent reaching above the shoulder 1 to 2 hours a day and intermittent driving a vehicle 6 to 7 hours a day.

On May 26, 1998 appellant was driving from one employing establishment to another when her vehicle collided with a tractor-trailer truck and then veered into a light post. She sustained four fractures to the pelvis, fractured ribs and a lacerated spleen. Appellant received continuation of pay for the period May 28 through July 10, 1998. The Office accepted her claim for lumbar strain, pelvic fractures, lacerated spleen and multiple contusions and paid temporary total disability compensation for the period July 11 through August 30, 1998. Appellant returned to work on August 31, 1998 at a temporary limited-duty position for two hours a day. In a September 8, 1998 report, Dr. Craig A. Beard, a Board-certified orthopedic surgeon, stated that appellant could return to work 4 hours a day, with no lifting over 10 pounds. In an October 13, 1998 report, Dr. Beard indicated that appellant could work over 10 hours a day. He commented that appellant had no aggravation of her preexisting condition from the May 26, 1998 employment injury. Dr. Beard released appellant to the restrictions set by Dr. Schoettle. In a November 16, 1998 decision, the Office terminated appellant's compensation arising from the May 26, 1998 employment injury on the grounds that she had no continuing disability for her date-of-injury position due to the May 26, 1998 employment injury. The Office indicated that her current disability was a result of her back condition previously accepted.

The employing establishment offered appellant the limited-duty, full-time position she held prior to the May 26, 1998 employment injury, which required lifting up to 35 pounds.[1] In an October 26, 1998 note, Dr. Schoettle approved of the limited-duty offer. In a November 10, 1998 note, appellant declined to accept or refuse the offered position until she received clarification on the physical restrictions of the position. In a November 23, 1998 note, Dr. Schoettle indicated that appellant had permanent restrictions of lifting, pulling and pushing up to 25 pounds, no standing without breaks for an 8-hour day, walking 1 to 2 hours a day and occasional twisting. In a December 1, 1998 letter, the employing establishment asked Dr. Schoettle whether the job restrictions he imposed were preventative. In a December 16, 1998 response, Dr. Schoettle indicated that the job restrictions he imposed on appellant were preventative in nature. He approved the limited-duty position offered to appellant.

In a May 3, 1999 letter, the Office informed appellant that it found the position offered to her was suitable. The Office stated that appellant had 30 days to accept the position or give her reasons for refusing to accept the position. The Office indicated that any explanation given by her would be considered prior to determining whether her reasons for refusing the job were justified. The Office advised appellant that failure to accept the position could result in termination of compensation.

In a May 24, 1999 response, appellant indicated that she would accept any suitable job offer that was within her limitations. She stated that no job offer was attached to the Office's May 3, 1999 letter so she was unclear about what job the Office was discussing. Appellant indicated that she had not received a job offer since the Office's November 10, 1998 letter,

[1] The Board notes that the first job offer was dated May 15, 1998 and was approved by Dr. Schoettle. However, the position was not offered to appellant before her May 26, 1998 employment injury.

which contained a requirement to lift up to 35 pounds. She noted that the job offered exceeded the work restrictions set by Dr. Schoettle in his November 19, 1998 examination included a restriction of lifting up to 25 pounds. Appellant stated that she had not received a job offer since that time. In a May 28, 1999 response, the employing establishment indicated that it would change the limited-duty job offered to appellant to reflect a 25-pound lifting restriction. Appellant accepted this position and returned to work on August 5, 1999. She claimed that, after working in this position she developed muscle spasms, cramping in her back and legs and pain radiating into her legs due to repetitive motion in pulling the door of her postal vehicle shut and in doing the twisting, bending and stooping required to collect mail from drop boxes. Appellant stopped working on August 9, 1999 and returned to work on September 2, 1999.

In an August 24, 1999 report, Dr. Schoettle stated that appellant had back pain, thoracic pain and intermittent radicular pain. He noted appellant gave a history of developing pain after twisting associated with picking up mail from collection boxes. Dr. Schoettle stated that appellant currently was at her baseline status. He indicated that she needed some fine tuning of her work restrictions to avoid aggravating her chronic thoracic and lumbar conditions. Dr. Schoettle commented that he did not find any evidence of a new injury but an aggravation of her preexisting condition which appellant dated back to June 1996.

In a November 1, 1999 decision, the Office terminated compensation effective July 18, 1998 on the grounds that appellant had refused to work under the work restrictions of November 24, 1997 and that her physician had submitted no evidence of renewed disability for work. The Office noted that Dr. Schoettle, in his August 24, 1999 report, had stated appellant had returned to her baseline status.

In a January 12, 2000 decision, the Office rejected appellant's claim for a recurrence of disability on August 5, 1999 on the grounds that she had sustained a new injury and not a true recurrence of disability. In an April 21, 2000 decision, the Office accepted her claim for temporary aggravation of the lumbar disc and thoracic disc protrusions.

In a letter received by the Office on October 30, 2000, appellant's attorney indicated that she was seeking reconsideration of the November 1, 1999 decision. The attorney submitted a copy of a January 3, 2000 letter from appellant requesting reconsideration. Appellant contended that there were numerous errors in the Office's evaluation of her case. She stated that she had never refused a job offered to her that was within her work restrictions. Appellant indicated that she had attempted to have the postmaster of the employing establishment give her a permanent job assignment but the postmaster had continued to say that there was insufficient work within her work restrictions to give her a permanent assignment. Appellant stated that when the temporary job offer was made November 10, 1998, which was dated May 15, 1998, she noted that the job requirements had been changed after Dr. Schoettle had approved them. She contended that she was within her rights to determine whether Dr. Schoettle had approved the changed job restrictions. Appellant stated that, after November 10, 1998, the postmaster only offered her work for four hours a day and stated that she did not have sufficient work to offer her a position for eight hours a day. She discussed her leave on stress beginning April 27, 1999, her return to work and her subsequent injury on August 5, 1999. Appellant submitted numerous documents and medical reports that had been submitted previously.

In a November 7, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and, therefore, insufficient to warrant review of its November 1, 1999 decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

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, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that: (1) the Office erroneously applied or interpreted a point of law; (2) advanced a point of law not previously considered by the Office; (3) or submitted relevant and pertinent 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.[2] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[3] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[4]

The Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious. Appellant, in her January 3, 2000 letter, reviewed the history of the job offers in her case and contended that the Office's decision was in error. However, appellant's argument raised issues that had already been considered by the Office in its prior decision. The medical evidence and reports had been submitted previously and considered by the Office. Appellant did not submit any new medical reports or new arguments that would call into question the Office's decision to terminate compensation for refusal to accept suitable work.

[2] 20 C.F.R. § 10.608(b).

[3] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[4] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated November 7, 2000 is affirmed.

Dated, Washington, DC
June 3, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member