

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHANELL T. KING and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 02-171; Submitted on the Record;
Issued June 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits September 18, 2000; and (2) whether the Office abused its discretion by denying appellant's request for reconsideration.

On October 3, 1997 appellant, then a 27-year-old letter carrier, filed a Form CA-2, claim for benefits, alleging that she developed a tendinitis condition in her right hip and groin area which was causally related to factors of her employment. The Office accepted her claim for right groin/leg strain. Appellant was off work until February 4, 1998, when she returned to light duty. She subsequently missed work for intermittent periods, but has not worked since May 1, 1998. The Office paid appellant compensation for appropriate periods.

In order to determine whether appellant continued to have residuals from her accepted conditions, the Office referred appellant for a second opinion examination with Dr. Stanley Friedler, a Board-certified orthopedic surgeon.

In a report dated January 29, 1999, Dr. Friedler stated findings on examination, reviewed the statement of accepted facts and appellant's medical history and concluded that there did not appear to be any explanation for her continued difficulties with her right hip and incapacitation. He stated that he was unable to explain the prolonged and significant amount of treatment she had received based on objective physical findings and diagnostic studies. Dr. Friedler opined that, orthopedically, based on his physical examination, appellant was able to work at her usual job with the employing establishment. He concluded that whatever difficulties she was having with regard to her ability to work were unrelated to her employment injury and most likely had no orthopedic basis.

On August 18, 2000 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Friedler's referral opinion, established that her employment-related disability had ceased and that she could return to full-time work without restrictions. The Office allowed appellant

30 days to submit additional evidence or legal argument in opposition to the proposed termination. She did not respond to this notice within 30 days.

By decision dated September 18, 2000, the Office terminated appellant's compensation.

By letter dated November 1, 2000, appellant's attorney requested reconsideration. Appellant submitted an October 23, 2000 report from Dr. C.T. Moorman, a specialist in orthopedic surgery, who performed surgery on her right hip on October 10, 2000. Dr. Moorman advised that, with regard to the etiology of appellant's hip condition, she had an acute onset of hip pain on September 10, 1997 and was treated conservatively until he performed a hip arthroscopy on October 10, 2000. Dr. Moorman stated:

"At that time the findings were of a posterior labral tear of the right hip as well as some Grade IV chondral changes in the femoral head. While there is some component of degenerative change in the femoral head, the problems in the labrum are typically of an acute nature. With this in mind, it is my opinion that the difficulties with [appellant's] right hip related to the labral tear are work related. It is my opinion that her prognosis for recovery with this is good but this will need to be borne out over time."

By decision dated January 25, 2001, the Office denied reconsideration.

By letter dated April 11, 2001, appellant requested reconsideration. She submitted a March 5, 2001 report from Dr. Moorman, who stated that her condition had improved and that she was experiencing a minimum amount of pain.

By decision dated June 4, 2001, the Office denied reconsideration.

By letter dated June 19, 2001, appellant requested reconsideration. She submitted a September 18, 2000 report from Dr. Andrew M. Tucker, a Board-certified family practitioner and Dr. Moorman's associate, who originally treated appellant for her employment injury in October 1997. Dr. Tucker advised that appellant had pain with hip flexion to 90 degrees, an objective finding consistent with previous examinations. He further stated:

"Because of lack of findings on imaging studies, it is presumed that her injury was soft tissue in nature and extra-articular. The only intra-articular disorder that could be missed on [magnetic resonance imaging, (MRI)] and still symptomatic and related to her original injury in my view is a torn labrum in her hip joint."

By decision dated September 18, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, the Office based its decision to terminate appellant's compensation on Dr. Friedler's January 29, 1999 referral report. He stated that there was no explanation for appellant's continued difficulties and incapacitation based on her hip condition. Dr. Friedler further indicated that there was no basis for the prolonged and significant amount of treatment appellant received in light of her objective physical findings and diagnostic studies. He concluded that, based on her physical examination, appellant was able to work at her usual job with the employing establishment and that whatever problems she was having with regard to her ability to work were unrelated to her employment injury. The Office relied on Dr. Friedler's opinion in its September 18, 2000 termination decision, finding that she had no residuals stemming from her 1997 work injury and that she had no continuing disability for work resulting from the accepted employment injury.

The Board finds that the Office properly found that Dr. Friedler's opinion negated a causal relationship between appellant's accepted condition and her October 3, 1997 employment injury. He found that she no longer had any residuals from the employment injury and could return to her regular duty. Dr. Friedler's report is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly found that his opinion constituted the weight of the medical evidence. The Board finds that Dr. Friedler's opinion constituted sufficient medical rationale to support the Office's September 18, 2000 decision terminating appellant's compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested reconsideration of the September 18, 2000 termination decision. She submitted October 23, 2000 and March 5, 2001 reports from Dr. Moorman, who noted the history of her right hip condition, indicated that she underwent hip surgery on October 10, 2000 and stated that she had findings of a posterior labral tear of the right hip in addition to some Grade IV chondral changes in the femoral head. Dr. Moorman opined that appellant's difficulties with her right hip related to her labral tear are work related. His reports, however, do not constitute medical evidence sufficient to overcome Dr. Friedler's opinion that appellant no longer has residuals from the accepted October 3, 1997 injury. Dr. Moorman's opinion is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.³ Moreover, his opinion is of limited probative value for further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's right hip condition was causally related to the October 3, 1997 employment injury. Thus, Dr. Moorman's report was insufficient to overcome the weight accorded to Dr. Friedler's

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *William C. Thomas*, 45 ECAB 591 (1994).

referral opinion, which the Office properly found represented the weight of the medical evidence. Accordingly, the Board affirms the Office's June 4 and January 25, 2001 decisions, which found that appellant failed to submit evidence sufficient to modify the September 18, 2000 termination decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, 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 evidence not previously considered by the Office.⁴

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.⁵

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in a prior decision, or is not pertinent to the issue on appeal. Dr. Tucker's September 18, 2000 report is cumulative and repetitive of evidence, which was considered by the Office in previous decisions and is not pertinent to the issue of whether appellant currently has residuals from her October 3, 1997 work injury. Additionally, her letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

⁴ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

The decisions of the Office of Workers' Compensation Programs dated September 18, June 4 and January 25, 2001 are hereby affirmed.

Dated, Washington, DC
June 5, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member