U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROCHELLE R. TYNES and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 02-257; Submitted on the Record;
Issued June 20, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's February 15, 2000 request for reconsideration.

In the prior appeal of this case,[1] the Board found that the evidence failed to establish that appellant sustained a recurrence of disability on or after September 22, 1997 as a result of her April 18, 1989 employment injury, which the Office accepted for lumbosacral strain and right hip contusion. The Board found that the medical record lacked a well-reasoned narrative from appellant's attending orthopedic surgeon, Dr. Ronald B. Greene, relating the claimed recurrent condition to the April 18, 1989 employment injury. He diagnosed internal derangement of the right knee and opined that this condition was a direct result of the April 18, 1989 employment injury, but he offered no medical reasoning or rationale to support this opinion. Dr. Greene failed to explain how appellant's right knee condition developed from the accepted lumbosacral strain and right hip contusion or was otherwise related to the April 18, 1989 injury. He also discussed no "bridging evidence" to support that appellant's right knee condition was related to the accepted injury. Further, Dr. Greene provided an inaccurate history. His June 8, 1999 report related appellant's recurrence to an employment injury on June 16, 1987, which he described as involving a fall but which actually involved a left shoulder strain from pushing and throwing mail.

The Board also found that the Office abused its discretion in denying appellant's February 15, 2000 request for reconsideration on the grounds that it was untimely. Appellant's request was, in fact, timely filed within one year of the Office's most recent merit decision on November 10, 1999. The Board, therefore, remanded the case to the Office for a proper exercise

[1] Docket No. 00-2039 (issued June 19, 2001).

of discretion to determine whether the request was sufficient to warrant a merit review of her claim.[2]

In a decision dated July 26, 2001, the Office denied appellant's February 15, 2000 request for reconsideration on the grounds that the evidence submitted in support thereof -- a January 6, 2000 explanation by appellant for the four-year delay in seeking medical attention for her right knee -- was repetitious and cumulative. Appellant submitted no medical evidence.[3]

The Board finds that the Office acted within its discretion in denying appellant's February 15, 2000 request for reconsideration.

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[4]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.[5]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

Appellant's request for reconsideration meets none of the criteria for obtaining a merit review of her case. It does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Instead, the request relies on the submission of appellant's January 6, 2000 explanation of the reason she did not obtain medical treatment for her right knee condition until 1997.

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[2] The facts of this case are set forth in the Board's prior decision and are hereby incorporated by reference.

[3] Although the Office's recommendation was to deny the request on the grounds that the evidence submitted in support thereof was "insufficient to warrant modification of the previous decision," the decision itself and its cover letter make clear that the Office disallowed appellant's request without reopening her case for a review on the merits of her claim.

[4] 20 C.F.R. § 10.605 (1999).

[5] *Id*. § 10.606.

[6] *Id*. § 10.608.

This type of evidence bears on the issue of fact of injury, that is, whether a claimant sustained an injury at the time, place and in the manner alleged. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* claim for compensation has been established.[7] The employee's explanation for a delay in obtaining medical treatment may be necessary to resolve an apparent discrepancy between the claimed injury and the employee's subsequent course of action. Whether an employee's statements and her subsequent course of action appear consistent presents a factual question, one that must be resolved before the Office need address the medical issue of causal relationship.

The issue in this case is not a factual issue. Fact of injury, that is, whether appellant sustained an injury on April 18, 1989 at the time, place and in the manner alleged, is already accepted. The issue, instead, is a medical one: whether appellant's claimed recurrence on or after September 22, 1997 is causally related to the April 18, 1989 employment injury. As the Board made clear in its June 19, 2001 decision, this issue requires sound medical reasoning based on a complete and accurate factual and medical history. The Board found that the medical opinion of appellant's attending physician, Dr. Greene, lacked probative value in part because it offered no medical reasoning and discussed no "bridging evidence" to support that the right knee condition was related to the 1989 injury.

Appellant, as a lay observer, is not competent to address this deficiency in the medical evidence. Causal relationship is medical in nature and can be established only by medical evidence.[8] The hearing representative carefully explained to appellant on June 22, 1998 what Dr. Greene needed to address and the Board's June 19, 2001 decision explained the deficiencies of Dr. Greene's opinion. Appellant's January 6, 2000 statement is not relevant to the medical question presented and repetitious, and cumulative of statements she previously provided. She offered the same explanation during her June 22, 1998 oral hearing before an Office hearing representative and in her November 17, 1997 correspondence to the district Office. Appellant also hinted as much on her claim for recurrence. As appellant acknowledged in her January 6, 2000 statement, she has offered this explanation more than once. The evidence supporting her request for reconsideration is clearly repetitive.

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[9]

Because appellant's February 15, 2000 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her claim, the Office acted within its discretion to deny the request without reopening her case.

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[7] *E.g., Neal C. Evins*, 48 ECAB 252 (1996).

[8] *Ausberto Guzman*, 25 ECAB 362 (1974).

[9] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

The July 26, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 20, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member