

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERI VOISARD and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Ogden, UT

*Docket No. 01-173; Submitted on the Record;
Issued March 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability for the period June 10, 1998 through January 14, 1999 due to her accepted December 8, 1995 employment injuries; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 10, 1995 appellant, then a 40-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her back on April 2, 1995 while pushing a gurney full of forms.¹ The Office accepted the claim for lumbosacral strain.

On December 20, 1995 appellant filed a claim for an injury sustained to her back on December 8, 1995 which was accepted for back strain and temporary aggravation of preexisting degenerative joint disease (DJD).² Appellant returned to a light-duty job working eight hours per day on January 29, 1996.

In a report dated March 20, 1998, Dr. Corey D. Anden, an attending Board-certified physiatrist, diagnosed chronic spine and extremity pain with fibromyalgia, mild degenerative cervical disc disease, chronic depression and osteoarthritis. He noted appellant's current symptoms as "constant low back pain across the lumbar region with intermittent radiation into the right buttock and right posterior thigh as far as to the knee" and these symptoms were aggravated by bending, lifting and sitting.

In a June 10, 1998 report, Dr. Douglas T. Shepherd, an attending Board-certified physiatrist, noted he last saw appellant on April 28, 1997 and that she developed pneumonia in September which resulted in an increase of her cervicothoracic symptoms. Regarding her work

¹ This was assigned claim number 12-0153368.

² This was assigned claim number 12-0158461.

hours, Dr. Shepherd noted that appellant stated that “her current work of nine hours per day is excessive. She would like to reduce that if possible.”

In a report dated July 16, 1998, Dr. Shepherd noted that appellant had reduced her hours to six instead of the four hours they had discussed. He noted that she continued “to describe aching and burning pain, primarily in the lumbosacral region with lower extremity symptom radiation” and neck and upper back pain with headaches.

On September 23, 1998 and March 4, 1999 appellant filed a claim for a recurrence of disability for partial disability commencing June 10, 1998 due to her accepted December 8, 1995 employment injury.³

By decision dated May 3, 1999, the Office denied appellant’s recurrence of disability claim on the grounds that she failed to submit sufficient medical evidence supporting a causal relationship between her claimed recurrence of disability and her accepted employment injuries.

In a letter dated June 2, 1999, appellant’s counsel requested an oral hearing which was held on December 2, 1999.

By decision dated February 17, 2000, the hearing representative affirmed the denial of appellant’s recurrence claim.

Appellant’s counsel requested reconsideration by letter dated May 8, 2000 and submitted an April 26, 2000 report by Dr. Shepherd who opined that appellant’s low back pain was due to her 1995 work-related injuries. In support of his conclusion that the low back pain was employment related, the physician noted:

“I believe [appellant’s] low back pain with lower extremity radiation is causally related to two incidents occurring in 1995, both of which occurred at work. [Her] symptoms have been fairly consistent in distribution and quality. [Appellant] has undergone extensive treatments including multiple courses of physical therapy and multiple medications, as well as local injection therapy. She has tried chiropractic care, acupuncture and massage. [Appellant’s] activities had also been modified. Again, [she] was reporting that the decline in her ability to function at work was primarily due to low back symptoms, which I believe were causally related to the 1995 incidents based on the available information. [Appellant’s] decline in work hours was reported in my June 10, 1998 noted. Thereafter, [she] was reporting difficulty in staying at work due to her ongoing symptoms.”

On June 27, 2000 the Office denied appellant’s request for reconsideration.

³ Appellant filed a traumatic injury claim on January 15, 1999 for an injury sustained that day which the Office accepted for contusion of the elbow and crushing injury buttocks. The Office assigned this injury claim number 12-180781.

The Board finds that appellant has not established a recurrence of disability for the period June 10, 1998 through January 14, 1999, due to her accepted employment injuries.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵ However, it is well established that proceedings under the Federal Employee's Compensation Act⁶ are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷

The evidence submitted in support of appellant's recurrence of disability claim is devoid of adequate medical opinion evidence relating her alleged recurrence of partial disability to her December 8, 1995 employment injury. Dr. Shepherd's June 10 and July 16, 1998 reports noted appellant's complaints, the doctor's findings and addressed her pneumonia in September 1997. The report does not contain a rationalized opinion explaining how appellant's disability commencing June 10, 1998 was related to her accepted employment injuries. Similarly, Dr. Anden noted that appellant's pain symptoms were aggravated by sitting, standing or bending, but failed to provide an opinion as to how appellant's disability was causally related to her accepted employment injury.

Accordingly, as appellant has not submitted rationalized medical opinion evidence explaining how and why her condition was related to her work injury, she has not established her recurrence of disability claim.

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a 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.⁸ Section 10.608(b) provides that

⁴ *Shelly A. Paolinetti*, 52 ECAB ___ (Docket No. 00-2058, issued May 29, 2001).

⁵ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Richard E. Konnen*, 47 ECAB 388 (1996); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁸ 20 C.F.R. § 10.606(b) (1999).

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.⁹ 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. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.

The Office properly found that appellant's May 8, 2000 reconsideration request did not warrant further merit review of her claim as it was not supported by relevant and pertinent new evidence not previously considered by the Office, nor did it show that the Office erroneously applied or interpreted a specific point of law. In his April 26, 2000 report, Dr. Shepherd reiterated that her low back pain was due to her two 1995 employment injuries, that her symptoms had been "fairly consistent in distribution and quality" and her decreased work hours was due to her low back symptoms which was reported in his June 10, 1998 report. Dr. Shepherd's report is repetitious of his prior reports of record.

The Board finds that appellant did not submit new and relevant evidence or show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. Accordingly, the Board finds that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly denied her request for reconsideration without merit review of the claim.

⁹ 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs dated June 27 and February 17, 2000 are hereby affirmed.

Dated, Washington, DC
March 11, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member