

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRISCILLA E. WALKER and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Long Beach, CA

*Docket No. 01-1852; Submitted on the Record;
Issued May 28, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on January 8, 2001; (2) whether appellant sustained a psychiatric condition causally related to her February 15, 1983 injury; and (3) whether the Office abused its discretion by denying appellant's request for reconsideration.

This case was previously before the Board.¹ In a January 31, 1990 decision, the Board found that the Office failed to meet its burden of proof to terminate appellant's compensation. Appellant, born on November 22, 1958, was employed as machinist apprentice with the Department of the Navy at the Long Beach Navy Shipyard when she filed a claim for an employment-related injury occurring on February 15, 1983. On that date appellant was using a wrench in her right hand when it slipped causing her right fifth finger to get caught on a piece of machinery and be bent away from her other fingers. She was diagnosed with a contusion/strain to her right fifth finger. The claim was accepted and appellant was placed on total temporary disability until March 28, 1983 when she returned to light duty. She worked light duty with intermittent periods of total temporary disability until she left the employing establishment in June 1983.

Appellant had three other work-related injuries accepted while with the employing establishment; a right shoulder strain in November 1981, cervical strain in 1982 and cervical and lumbar strains in 1983. All these injures resolved without residual.

After leaving the employing establishment appellant worked at various times for a Veterans Administration Hospital, a nuclear power plant and for a youth prison in New York. She stopped work entirely in 1989 and has not returned. Appellant receives disability from the State of New York and had received total disability from the federal government until it was terminated in January 2001.

¹ Docket No. 89-514 (issued January 31, 1990).

In a November 8, 2000 letter, the Office notified appellant of its proposed termination and provided 30 days to submit additional evidence. The Office based its decision to terminate on a medical report from Dr. Neal C. Capel, a Board-certified orthopedic surgeon. In his December 6, 2000 medical report he diagnosed:

“Strain/sprain of the right fifth finger, largely at the MP [metatarsophalangeal] joint, twenty seven years ago. No residual signs of any instability or lack of motion or strength or coordinative ability. There is some decreased sensation over the fifth and fourth and ulnar half of the fourth finger but also over the rest of [appellant’s] hand to a moderate to light degree.... Ulnar mononeuropathy treated in 1988 with nerve translocation and neurolysis with no changes. Sensory deficit mild. The accident of February 15, 1983 in my opinion, did not cause the ulnar neuropathy on the right hand but it probably was a subtle development of repetitive use and the causation is not likely to be attributed reasonably to the [employing establishment] but to other and general life activity.... The right hand is capable objectively of performing most every function and activity....”

Dr. Capel concluded that there was no objective evidence that appellant’s current condition was related or caused by her February 15, 1983 injury. He indicated there was no evidence that appellant could not perform the physical requirements of the date-of-injury job due to her February 15, 1983 injury.

In response to the Office’s proposed termination, appellant submitted a 1997 medical report from Dr. Kevin M. Passer, Board-certified in psychiatry and neurology. In his October 6, 1997 report, Dr. Passer diagnosed:

Axis I: (1) bipolar disorder, severe, recurrent with psychotic features (2) post-traumatic stress disorder.

Axis II: paranoid personality disorder.

Axis III: physical symptoms and disorder on this axis should be provided by the appropriate examining specialist.

Axis IV: Psychosocial stressors: severe due to problems in all major life areas.

Axis V: global assessment of functioning is poor and is less than 50.

He noted:

“It is very difficult to ascertain to what degree [appellant’s] work[-]related injury is impacting on her psychiatric status as she is now depressed, psychotic and delusional.... I can only say that she is still distressed from the injury and is also psychotic. I cannot, unfortunately state as to what degree her overall psychotic condition is secondary to her psychotic disorder vs. secondary to her injury.”

After receiving the report of Dr. Passer, the Office scheduled a second opinion evaluation with Dr. Claude Brown, Board-certified in psychiatry, to determine whether her current psychiatric condition was causally related to the February 15, 1983 injury.

Dr. Brown, met with appellant and reviewed her extensive medical history. In a December 6, 2000 report, he diagnosed “probable adjustment disorder, mixed with depression and somatization with hysterical and/or malingered symptoms.” Dr. Brown wrote:

“[Appellant] is competent to manage her affairs. Her present problems are not related to any injury to her right finger but a reflection of continuing emotional conflicts of many years duration plus much secondary gain that she experiences at this time. The nonwork stress situations include dealing with three illegitimate children, moving around the country....”

He also noted that appellant was examined by a psychiatrist in 1984 following the injury and he gave his opinion that she had no pertinent psychiatric problems at that time. Dr. Brown further noted that appellant was capable of performing her date-of-injury job and she could perform any job within her training and experience. However, considering her long period of not being at work and the secondary gains involved, she would probably resist any kind of work.

The Office terminated appellant’s benefits effective January 8, 2001 based on the reports of Drs. Capel and Brown, finding that the weight of the medical evidence of record establishes her employment-related medical condition and disability had ceased.

In a letter dated March 15, 2001, appellant requested reconsideration arguing that, in addition to the accepted injury to her finger, she sustained injuries to her hand, wrist, elbow, shoulder and neck that have left her totally disabled. No medical evidence was submitted with her reconsideration request.

In a nonmerit decision dated June 27, 2001, the Office denied appellant’s reconsideration request, finding that appellant failed to raise new substantive legal questions or include new and relevant evidence.

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

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Capel. His report establishes that appellant has no further disability causally related to the accepted injury of February 15, 1983.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

The Board has carefully reviewed the opinion of Dr. Capel and notes it is reliable, has probative value and convincing quality with respect to the physician's conclusions regarding whether appellant had continuing disability causally related to her February 15, 1983 injury. His opinion is based on a proper factual and medical history, provides a thorough review of the relevant medical evidence. Dr. Capel provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.⁴ Dr. Capel provided medical rationale for his opinion by explaining that appellant's accepted strain had resolved and that her ongoing complaints related to additional injuries to her hands, wrist, neck and ulnar nerve were caused by other stresses in her life. The Board further notes that appellant submitted no new medical evidence suggesting her current physical complaints are related to her 1983 injury to her finger.

The Board finds that appellant has not established that she sustained a psychiatric condition causally related to her February 15, 1983 injury. An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

⁴ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

The report by Dr. Passer is deficient in that he did not discuss appellant's work history or demonstrate specific knowledge of the February 15, 1983 accepted strain/sprain of her fifth finger. Dr. Passer did not discuss that injury's contribution to the cause of her emotional condition at the time he examined her, 14 years after the incident nor did he demonstrate any knowledge of her medical history since the accepted injury. The Board finds that appellant has not met her burden of proof to establish her emotional condition is related to the February 15, 1983 injury.

The Board also finds that the Office did not abuse its discretion by denying further merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹³ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

In the present case, appellant has not established that the Office erroneously applied or interpreted a point of law, advance a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

In her March 15, 2001 request, appellant argued that she had additional injuries that were not considered, but she submitted no new evidence to support this argument that had been raised

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ 20 C.F.R. § 10.607(a).

¹² 20 C.F.R. § 10.608(b).

¹³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

numerous times before. As appellant failed to meet the requirements for a merit review, the Board finds that the Office properly denied her requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated June 27 and January 8, 2001 are affirmed.

Dated, Washington, DC
May 28, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member