U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURO IASPARRI and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Hoboken, NJ

Docket No. 02-1746; Submitted on the Record;
Issued November 19, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained a recurrence of disability effective September 27, 2000, causally related to his employment injuries of June 10, 1995, January 6 and December 13, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On June 9, 1995 appellant was emptying a bulk mail container of parcel post sacks when he developed low back pain. He stopped working on June 10, 1995 and returned to light-duty work on June 13, 1995. On January 6, 1996 appellant was emptying a postal container of priority parcels and first-class mail when he again developed low back pain. On December 13, 1996 he was sorting mail when he developed back pain while attempting to place mail in the appropriate space.

In an October 15, 1996 report, Dr. Arthur E. Taubman, an orthopedic surgeon, stated that he had referred appellant for an electromyogram (EMG) which showed an S1 nerve root irritation. He related appellant's condition to the June 9, 1995 and January 6, 1996 employment injuries. In a February 7, 1997 report, Dr. Michael D. Green, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan showed a small paracentral disc herniation at T11-12, which produced a mild impression on the right anterior aspect of the subarachnoid space and the proximal portion of the intervertebral foramen on the right. He found disc bulging at L4-5 and L5-S1, more prominent on the right at the L4-5 disc space. Dr. Green noted degenerative disc disease at T11-12, T12-L1, L4-5 and L5-S1. In a July 18, 1997 report, Dr. J. Zurlo, a Board-certified radiologist, and Dr. A. Holodny, a Board-certified radiologist, stated that an MRI scan showed disc herniation at T11-12 with a right neural foraminal stenosis, L4-5 degenerative disc disease, and a L5-S1 central disc herniation. The Office accepted appellant's claim for low back sprain and S1 nerve root irritation.

In an October 31, 1997 letter, the employing establishment offered appellant a position as a full-time distribution clerk with modified duties. He accepted the position and returned to

work. In a January 26, 1998 decision, the Office found that appellant had no loss of wage-earning capacity based on his actual earnings.

Appellant filed a claim for a recurrence of disability effective September 27, 2000.[1] He indicated that he had brought his children home from school when his youngest child, after getting out of the car, ran toward the street. Appellant indicated that he began to chase his son but felt intense pain in his back and fell, injuring his knees, elbow and forehead. In an October 4, 2000 report, Dr. Paul P. Vessa, a Board-certified orthopedic surgeon, noted that appellant fell at home while chasing his son. He noted that appellant had nonradicular pain in his back with pseudoradicular pain on the right side. He diagnosed lumbar degenerative disc disease with an acute exacerbation following the fall.

In an April 11, 2001 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to demonstrate that appellant's claimed recurrence of disability was causally related to his June 9, 1995 employment injury. He filed a request for a hearing before an Office hearing representative, which was conducted on September 26, 2001. Subsequent to the hearing, appellant submitted an October 16, 2001 report from Dr. Vessa who stated that it was entirely possible that, given appellant's painful degenerative disc disease, his legs could have gone out from under him while trying to extend himself, especially while running after his son. He stated that he could say with medical probability that the September 27, 2000 fall was directly related to appellant's low back and the degenerative disc disease would at times cause weakness in his legs, creating a problem with balance that could have conceivably caused appellant to fall.

In a December 11, 2001 decision, the Office hearing representative stated that Dr. Vessa's October 4, 2000 report did not describe objective findings of a worsening of appellant's injury-related back condition or evidence of injury from the September 27, 2000 fall. She indicated that, even if appellant's fall at home was shown to be due to residuals of his work-related back condition, appellant still needed to submit medical evidence of a resulting injury and disability before he could establish entitlement to compensation.

In a February 5, 2002 letter, appellant requested reconsideration and submitted a copy of Dr. Vessa's October 16, 2001 report. In a March 1, 2002 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitive and, therefore, insufficient to warrant further review.

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to prior employment injuries.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence

[1] The claim form for the recurrence of disability is not contained in the case record submitted on appeal. The Office indicated that it had considered the claim to be a claim for a new injury and subsequently concluded that appellant was claiming that the September 27, 2000 incident was a consequential injury related to his employment injuries.

showing causal relationship must be submitted.[2] In this case, appellant claimed that the September 27, 2000 incident which precipitated the recurrence of disability was a consequence of his prior employment-related back injuries. In the case of *John R. Knox*,[3] regarding consequential injury, the Board stated:

> "It is an accepted principal of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor *Larson* in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"[4] (Citations omitted.)

In his October 4, 2000 report, Dr. Vessa indicated that appellant had an exacerbation of back pain after he fell while chasing his son. However, he did not give any opinion on whether appellant was disabled as a result of this fall and did not discuss how the September 27, 2000 incident was a consequence of his prior employment injuries. In his October 16, 2001 report, Dr. Vessa stated that appellant's degenerative disc disease could have caused his legs to give out while he was chasing his son. He stated that was equivocal and speculative and, therefore, had insufficient probative value to establish that the September 27, 2000 incident was a consequence of his employment-related back condition. Appellant therefore, has not met his burden of proof in establishing that he had a recurrence of disability due to his employment injuries.

The Board further 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 the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, 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

[2] *Dominic M. DeScala*, 37 ECAB 369 (1986).

[3] 42 ECAB 193 (1990).

[4] *Id*. at 196.

without reviewing the merits of the claim.[5] 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.[6] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[7] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[8]

The only evidence appellant submitted in support of his request for reconsideration was Dr. Vessa's October 16, 2001 report, which he had submitted previously. As this evidence was repetitive, appellant did not present a basis for reopening his case.

The decisions of the Office of Workers' Compensation Programs dated March 1, 2002 and December 11, 2001 are hereby affirmed.

Dated, Washington, DC
November 19, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] 20 C.F.R. § 10.608(b).

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

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

[8] 20 C.F.R. § 10.608(b).