U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN J. HAMBLIN-KAVINA and U.S. POSTAL SERVICE, POST OFFICE, Portland, OR

Docket No. 03-1220; Submitted on the Record;
Issued August 15, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for payment of support hose as not causally related to her May 8, 2001 employment injury; and (2) whether the Office's refusal to reopen appellant's case for further consideration of the merits of her claim constituted an abuse of discretion.

The Office accepted that on May 8, 2001 appellant, then a 51-year-old unassigned mail processor, sustained a stasis ulcer of the right leg, while in the performance of federal duties and that the condition resolved as of August 3, 2001. She did not lose any time from work. The Office previously accepted, in claim number A14-0307041, that appellant sustained a temporary aggravation of venous stasis ulcer right ankle on July 3, 1995, which resolved by August 9, 1996. She had been working in a light-duty capacity since 1995.

In a January 22, 2003 letter, Dr. Joan M. Browning, Board-certified in preventive medicine and appellant's treating physician, advised appellant that the Office had not paid an August 23, 2002 bill in the amount of $1,062.00, to the supplier for six pair of support hose. She indicated that it was medically necessary for appellant to wear support hose to prevent recurrent venous stasis ulcer, while working with her feet in a dependent position, whether it be standing/walking or sitting. Previous medical reports of record indicated that appellant should continue her heavy-duty support hose/compression stockings on an indefinite basis. The medical reports additionally indicated that appellant was released for regular work on August 13, 2002.

By letter dated January 29, 2003, the Office advised appellant that it had received Dr. Browning's letter requesting authorization for payment of support hose as a preventive measure against the return of a leg ulcer. The Office advised that, as appellant's ulcer had cleared, her case was closed. The Office further advised that it would not pay for preventative care and, accordingly, declined to pay the bill for $1,062.00.

By decision dated March 11, 2003 and reissued May 26, 2003, the Office denied appellant's claim for payment of six pair of support hose as her work-related condition had

resolved on August 3, 2001. The Office noted that previous payments for support hose in February 2002 were made in error.

On February 13, 2003 appellant requested reconsideration and argued that the support hose were required to provide palliative care for a work-related condition. She submitted a February 25, 2003 medical report, in which Dr. Browning advised that such pantyhose must be worn at work as a form of palliative care to enable appellant to continue working. Appellant also submitted a copy of a February 5, 2002 prescription for the support hose, authorized by Dr. Browning.

By decision dated March 28, 2003, the Office denied appellant's claim for reconsideration on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that the Office properly denied appellant's request for payment of support hose on the grounds that it was not causally related to her May 8, 2001 employment injury.

The Office is required by section 8103 of the Federal Employees' Compensation Act[1] to provide all medical treatment necessary as a result of an employment injury. The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Act also provides that appropriate medical care be furnished by or on the order of physicians designated or approved by the Office and that a claimant be allowed the initial choice of physician. This does not, however, restrict the Office's power to approve appropriate medical treatment obtained after the initial choice of physician or without prior authorization from the Office, which has broad discretionary authority in approving services provided under the Act.[2]

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[3] Therefore, in order to prove that her support hose was warranted, appellant must submit evidence to show that the support hose was for a condition causally related to the employment injury and that the support hose was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.

In interpreting section 8103, the Board has long recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under the Act.[4] The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office,

[1] 5 U.S.C. § 8103.

[2] *See Patsy R. Tatum*, 44 ECAB 490, 496 (1993); *Marjorie S. Greer*, 39 ECAB 1099 (1988).

[3] *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

[4] *Patsy R. Tatum*, 44 ECAB 490, 496 (1993).

therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[5] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[6] Abuse of discretion is not established by a showing merely that the evidence could be construed so as to produce a contrary factual conclusion.[7]

A review of the record, in the present case, discloses that the accepted condition, a stasis ulcer of the right leg, which arose from a May 8, 2001 work-related injury, had resolved by August 3, 2001. Thus, the issue becomes whether the Office may authorize palliative care treatment for a work-related condition which has resolved. As stated above, it is necessary to show that the medical condition for which an expenditure is incurred for treatment is causally related to the employment injury and is medically warranted. Dr. Browning supported that the support hose are medically warranted. However, the record reflects that, although appellant has a preexisting venous insufficiency medical condition, the Office did not accept this condition and/or its aggravation as employment related. Accordingly, as the accepted condition of a stasis ulcer of the right leg had resolved by August 3, 2001, appellant has failed to meet her burden of proof that her need for support hose was medically necessitated by the May 8, 2001 employment injury. The Office, therefore, did not abuse its discretion in refusing to authorize payment of the support/compression hose in this claim.[8]

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

Under section 8128(a) of the Act,[9] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that 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 new evidence not previously considered by the Office.[10] Section 10.608(a) 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 without reviewing the merits of the claim.[11] 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.[12]

[5] *Joe E. Williams*, 36 ECAB 494 (1985).

[6] *Rosa Lee Jones*, 36 ECAB 679 (1985).

[7] *Manny Korn*, 1 ECAB 78 (1947).

[8] *See generally Stella M. Bohlig*, 53 ECAB __ Docket No. 00-749 (issued February 8, 2002).

[9] 5 U.S.C § 8128(a).

[10] 20 C.F.R. § 10.606(b)(2).

[11] 20 C.F.R. § 10.608(a).

[12] *Howard A. Williams*, 45 ECAB 853 (1994).

Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.[13]

In this case, the Office properly found that appellant's letter requesting reconsideration was insufficient to warrant a merit review of its prior decision. In her reconsideration request, appellant contended that the support hose were required to provide palliative care and submitted medical documentation to support her contention. The letter neither raised substantive legal questions, nor included relevant evidence to warrant a merit review of its prior decision. Dr. Browning's February 25, 2003 medical report reiterated her opinion that appellant should wear support hose to prevent a recurrence of a stasis ulcer. The Board has long held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.[14] Accordingly, appellant has not established that the Office erred in its March 28, 2003 decision by denying her request for a review on the merits of its March 11, 2003 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

The May 26, March 28 and 11, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 15, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

[14] *Edward W. Malaniak*, 51 ECAB 279 (2000); *Merlind K. Cannon*, 46 ECAB 581 (1995).