U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CECILLIA A. WISE and U.S. POSTAL SERVICE,
POST OFFICE, Broken Arrow, OK

Docket No. 03-1607; Submitted on the Record;
Issued December 1, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability on December 26, 2001 causally related to her accepted July 27, 1999 employment injury; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review on the merits.

On July 27, 1999 appellant, then a 42-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, as a result of a motor vehicle accident in the performance of duty on that date, she sustained a headache and hurt the back of her neck. On August 10, 1999 the Office accepted appellant's claim for a cervical strain. Appellant's claim was also accepted for an anterior cervical discectomy at C5-6 and the condition of central stenosis secondary to disc disease. Compensation benefits were paid. In a medical report dated October 25, 2000, Dr. Gregory L. Wilson, appellant's treating osteopath, released appellant to work full duty without restrictions as of October 30, 2000.

In a medical report dated March 15, 2001, Dr. Wilson indicated that he reviewed appellant's cervical spine x-rays and it appeared that appellant had a very stable fusion, which was well healed at the C5-6 level. Dr. Wilson further indicated that he released appellant from his care and that she could continue to work full duty without restrictions.

On June 18, 2002 appellant filed a claim for a recurrence.[1] She noted that the date of the recurrence was October 31, 2000, the date which she returned to regular-duty work, but indicated that she stopped work after the recurrence on December 26, 2001.

In support of her claim for recurrence, appellant submitted numerous medical reports by Dr. R. Tyler Boone, an internist, who started treating appellant on November 26, 2001.

[1] Previously, on April 5, 2002, appellant had filed a claim for occupational disease (Form CA-2). The Office has not adjudicated whether appellant's condition or disability is causally related to her duties after her return to work. Therefore, this is not before the Board. *See* 20 C.F.R. § 501.2(c).

Dr. Boone noted that appellant had "L4-5 degenerative dis[c] disease with some sciatica in the left leg." He further noted, "Her back problem is not a work-related injury per history." In a January 23, 2002 report, Dr. Boone indicated that he continued to believe that appellant could work, but that she should not be lifting 70 pounds. He further indicated that appellant should avoid a lot of repetitive bending and stooping and avoid repetitive lifting, especially of more than 35 to 40 pounds. In an August 19, 2002 report, Dr. Boone stated that appellant reported that she was now on medical disability retirement. He noted that his impression was that appellant had mechanical back pain, probably due to the bad disc at L4-5 which had been noted in the past.

By decision dated September 13, 2002, the Office denied appellant's claim for a recurrence of disability, finding that the evidence submitted was not sufficient to establish that appellant sustained a recurrence on or after December 26, 2001 causally related to her cervical strain, degeneration of cervical disc and aggravated spinal stenosis.

By letter dated October 8, 2002, appellant requested reconsideration and submitted further medical reports from Dr. Boone. On August 19, 2002 Dr. Boone opined that appellant has mechanical back pain, probably due to the bad disc at L4-5, which was noted in the past. He recommended an updated magnetic resonance imaging if she remained symptomatic. In a medical report dated September 27, 2002, Dr. Boone opined:

> "My impression is that she does have mechanical back pain, probably due to a pathologic or desiccated L4-5 lumbar dis[c]. I do not have any information with regards to the cause of her back problems being related to a car accident in 1999. Likely she has a combination of problems from a desiccated or degenerative dis[c] which could have been aggravated or exacerbated by repetitive lifting at work.
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> In a November 15, 2002 report, Dr. Boone stated:
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> "There is no way that I can say her back pain is related to the automobile accident in 1999, but it is apparent from her records that these symptoms did come on after she returned to work at the [employing establishment] in January of 2001."

By decision dated March 3, 2003, the Office denied appellant's request for reconsideration for the reason that the evidence submitted with the request was not sufficient to warrant a merit review of the file.

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of disability causally related to the accepted work injury.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury.[2] This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history,

[2] *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3]

In the instant case, the Office accepted that appellant had cervical strain and central stenosis secondary to disc disease causally related to her July 27, 1999, work-related motor vehicle accident. Appellant returned to work without restrictions on October 31, 2000. Appellant submitted medical reports which indicated that she commenced treatment for mechanical low back pain with Dr. Boone on November 26, 2001. However, Dr. Boone did not attribute appellant's low back condition to her accepted work-related motor vehicle accident of July 27, 1999, which was accepted for a cervical condition. No other medical report in the record indicates that appellant's low back pain, after she returned to work on October 31, 2000, was causally related to her accepted motor vehicle accident. Accordingly, appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted injury.

The Board further finds that the Office, by its September 13, 2002 decision, properly refused to reopen appellant's case for further review on the merits of her claim.

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:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may:
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> (1) end, decrease or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[4]

Under 20 C.F.R. § 10.606(b)(2), 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. 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 without reviewing the merits of the claim. 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.[5] Appellant made no contention that the Office erroneously applied or interpreted a specific point of law and did not advance a legal argument not previously considered by the Office. The evidence appellant submitted in support of her request for reconsideration was duplicative of evidence already in the record. The new evidence does not contain a physician's report addressing appellant's low back condition to appellant's accepted work-related motor vehicle accident. In fact, Dr. Boone clearly

[3] *Helen K. Holt*, 50 ECAB 279, 282 (1999).

[4] 5 U.S.C. § 8128(a).

[5] *James R. Bell*, 52 ECAB 414 (2001); *Eugene F. Butler*, 35 ECAB 393 (1984).

indicated that there was no way that he could say that her low back pain was related to the automobile accident of 1999. Accordingly, the new evidence is not "relevant and pertinent new evidence not previously considered by the Office" as it does not relate appellant's current low back condition to the 1999 accepted injury. The Office properly denied appellant's request for a merit review of the claim.

The decisions of the Office of Workers' Compensation Programs dated March 3, 2003 and September 13, 2002 are hereby affirmed.

Dated, Washington, DC
December 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member