U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE SPANN and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

Docket No. 03-300; Submitted on the Record;
Issued March 18, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a recurrence of disability on March 20, 2002 causally related to her accepted April 5, 1999 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On April 5, 1999 appellant, then a 37-year-old letter carrier, injured her left leg when she came out of the rest room and tripped over the leg of a chair.

On May 24, 1999 the Office accepted appellant's claim for a left meniscal and anterior cruciate ligament (ACL) tears of the knee.

Appellant returned to regular duty on December 1, 2000.

On March 30, 2002[1] appellant filed a notice of recurrence of disability alleging that on March 20, 2002 she had a recurrence of disability due to her April 5, 1999 injury.

Appellant's physician, Dr. William Beach, a Board-certified orthopedic surgeon, faxed copies of his treatment records to the Office on June 30, 2002. Dr. Beach indicated that he had attached the notes regarding appellant's left knee, that the notes spoke for themselves and he would not be dictating a separate letter. The records were comprised of reports dating from April 3, 1999 to December 1, 2000.

On April 23, 2002 the Office advised appellant of the type of medical evidence needed to establish her recurrence claim for a recurrence of disability on March 20, 2002.

[1] The record reflects that appellant filed an earlier claim for recurrence on January 12, 2000.

By decision dated June 21, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on March 20, 2002 causally related to her April 5, 1999 employment injury.

On July 12, 2002 appellant requested reconsideration of the Office's decision.

In an October 9, 2002 decision, the Office refused to reopen appellant's claim for further review of the case on its merits as it found the evidence submitted insufficient to warrant reopening of the case. The Office found that appellant's letter neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability beginning on March 20, 2002 causally related to her April 5, 1999 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.[2] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[3] An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.[4]

In this case, the Office accepted that appellant sustained a left meniscal and ACL tear of the knee in the performance of duty on April 5, 1999. Appellant filed a notice of recurrence of disability commencing March 20, 2002. The Office requested that appellant provide medical evidence that would establish a causal relationship between her current conditions and her accepted April 5, 1999 injury. Appellant did not submit any reasoned medical evidence that her present condition was causally related to her April 5, 1999 employment injury. For example, she did not submit a medical report in which her treating physician explained why her claimed continuing condition would be related to the April 5, 1999 accepted injury. In Dr. Beach's June 3, 2002 facsimile, he indicated that he was enclosing the notes regarding appellant's left knee, and he would not be providing a separate letter as the notes spoke for themselves. The records dated from April 3, 1999 to December 1, 2000 and were related to the April 5, 1999 injury. However, all of the reports were obtained prior to the March 20, 2002 recurrence. In each of these reports, Dr. Beach addressed appellant's April 5, 1999 accepted condition and treated her until her release to full duty on December 1, 2000. However, none of the reports contained any explanation regarding the condition that appellant alleged recurred on March 20,

[2] *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[3] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[4] *Ausberto Guzman*, 25 ECAB 362 (1974).

2002. For example, Dr. Beach did not provide any explanation or medical evidence in any of his reports explaining why the present condition was causally related to the April 5, 1999 employment injury. He did not offer any rationalized medical opinion in any of his reports to show how appellant's employment caused or aggravated her condition.[5] In fact, it does not appear that Dr. Beach examined appellant subsequent to December 2000.

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted any reasoned medical opinion explaining why her recurrence of disability beginning March 20, 2002 was caused or aggravated by the April 5, 1999 employment injury.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[6] 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.[7] 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.[8] 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 of the merits.[9]

In this case, the Office denied appellant's July 12, 2002 request for reconsideration in an October 9, 2002 decision.

In her July 12, 2002 letter, appellant requested reconsideration and indicated that she was asking for a "reconsideration of her claim because of the medical report was mailed too late for review." She indicated that she was informed that it was mailed on June 20, 2002. Appellant requested that the Office reconsider her case as "she was having difficulty performing her job because of the constant pain." The record reflects that no new evidence was received. Further, the reports of Dr. Beach were repetitious of those previously submitted and reviewed by the

[5] The opinion of the physician must be based upon 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack*, 43 ECAB 321 (1991).

[6] 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 her own motion or on application." 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.606(b)(1)(2).

[8] *Id.* at § 10.607(a).

[9] *Id.* at § 10.608(b).

Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[10] Thus, the evidence submitted by appellant cannot serve as a basis for reopening the claim.[11]

The Board finds that appellant did not raise any substantive legal questions and failed to submit any new relevant and pertinent evidence not previously reviewed by the Office. Therefore, the Office did not abuse its discretion in its October 9, 2002 decision by refusing to reopen appellant's claim for review of the merits.[12]

The October 9 and June 21, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 18, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[10] *Roseanne S. Allexenberg*, 47 ECAB 498 (1996); *James A. England*, 47 ECAB 115 (1995).

[11] *Richard L. Ballard*, 44 ECAB 146 (1992).

[12] Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.