

**United States Department of Labor
Employees' Compensation Appeals Board**

DUANE E. LEA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 03-770
Issued: August 24, 2004**

Appearances:

Duane E. Lea, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 5, 2003 appellant filed a timely appeal from Office of Workers' Compensation Programs' September 11, 2002 denial of reconsideration and March 1, 2002 merit denial of his claim for recurrence of disability. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability as of September 1, 1995 causally related to his accepted conditions of temporary aggravation of phlebitis and venous insufficiency; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 39-year-old postal supervisor, filed an occupational disease claim on January 2, 1990, alleging that he had developed phlebitis and varicose vein conditions causally related to factors of his federal employment. The Office accepted the claim for temporary

aggravation of phlebitis. Appellant subsequently filed another claim which was accepted for venous insufficiency; the two claims were ultimately combined. Appellant missed work intermittently and received compensation for various periods of total and partial disability. He returned to full duty in June 1994. On September 2, 1995 appellant was reassigned to a job as a supervisor in computer forwarding.

On May 14, 1996 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on September 1, 1995 which was causally related to his accepted conditions. In a memorandum of telephone conference call dated August 12, 1996, the Office stated that from September 2, 1995 to June 4, 1996 appellant was assigned to a position as supervisor of computer forwarding; the Office stated that the record indicated this position required appellant to make mail counts every 2 hours at 15 computer terminals, a process which lasted 25 minutes. The remainder of appellant's workday involved sedentary work and answering questions from employees. On June 5, 1996 appellant was transferred to a job which entailed only sedentary work. Appellant submitted several reports from Dr. Raymond S. Wojtalik, Board-certified in general and vascular surgery, who stated in a report dated September 20, 1996:

"[Appellant] does not presently have an ongoing phlebitic problem. He does have venous insufficiency as well as valvular incompetence of the venous valves in his lower extremities. This is secondary to previous bouts of phlebitis and venous thromboses. This is a condition which is chronic and will not improve physiologically or functionally with time. The anatomic defects are fixed at this time. The diagnoses are correct and are definitely related to [appellant's] employment in that his work activities demand him to be standing or upright for long periods of time. This aggravates the swelling and the discomfort secondary to the chronic venous insufficiency. [Appellant] would benefit from the ability to have a more sedentary occupation with the ability to elevate his legs whenever possible."¹

By decision dated January 6, 1997, the Office denied appellant compensation for a recurrence of his accepted leg conditions. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of September 1, 1995 which was caused or aggravated by the accepted conditions. The Office noted that Dr. Wojtalik's opinion was of diminished probative value because he relied on appellant's statement, contradicted by the employing establishment's records, that his job duties as of September 1, 1995 required prolonged standing and walking which aggravated his accepted leg conditions. The Office therefore found that Dr. Wojtalik's opinion was not based on an accurate history regarding the actual duties of appellant's supervisory job as of September 1, 1995.

By letter dated January 8, 1997, appellant's attorney requested an oral hearing, which was held on May 20, 1997.

¹ Dr. Wojtalik submitted virtually identical findings and conclusions in a report dated December 10, 1996 and in several subsequent reports.

In a report dated April 29, 1997, Dr. Wojtalik stated:

"[Appellant] has chronic venous insufficiency with valvular incompetence of the venous structures in his lower extremities. His work-related activities definitely exacerbate and complicate his conditions. Prolonged periods of standing and lengthy periods of arduous walking cause [appellant] to experience pain and discomfort in his lower extremities which prevent [appellant] from actively participating in his productive work-related activities. Continuing to partake in his present employment activities will only cause him to experience his phlebitic symptoms on a regular basis and potentially cause further complications. [Appellant] must avoid at all costs standing or sitting in a dependent position for any length of time. It is unlikely that his condition has any chance of improving at this time."

By decision dated June 25, 1997, an Office hearing representative affirmed the January 6, 1997 Office decision.

The Office subsequently denied appellant's claims for a schedule award causally related to his accepted leg conditions by decisions dated August 17, 1998, March 25, 1999,² August 15, 2001 and January 23, 2002. By letter dated February 7, 2002, appellant requested reconsideration. Appellant submitted a January 28, 2002 report from Dr. Wojtalik, in which he essentially reiterated his previous findings and conclusions. Dr. Wojtalik stated:

"[Appellant] was last evaluated by me on November 19, 2001. He continued to have symptoms and signs of chronic venous insufficiency of his left lower extremity. This condition is permanent and impairs his ability to function in both productive and recreational activities. The condition was aggravated and accelerated by his previous work conditions. The work requirement caused him to stand for prolonged periods of time, and to do prolonged walking. The chronic venous insufficiency was definitely related to his previous work conditions."

By decision dated March 1, 2002, the Office denied appellant's claim for recurrence of his accepted phlebitis and venous insufficiency conditions.³ The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of September 1, 1995 was caused or aggravated by the accepted leg conditions. The Office noted that Dr. Wojtalik's report was essentially the same one presented and rejected by the Office in its previous decisions.

By letter dated May 17, 2002, appellant requested reconsideration. Appellant did not submit additional medical evidence with his request.

² By decision dated April 5, 2001, the Board adopted the Office hearing representative decision of March 25, 1999. Docket No. 99-2211 (issued April 5, 2001).

³ The previous Office decisions and Board decision dating back to 1998 pertained to appellant's schedule award claim. In this decision, the Office considered appellant's claim as one for recurrence of disability.

By decision dated September 11, 2002, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury, and who supports that conclusion with sound medical reasoning.⁴

ANALYSIS -- ISSUE1

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of September 1, 1995 to his accepted phlebitis and venous insufficiency conditions. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment conditions.

In support of his recurrence claim, appellant submitted Dr. Wojtalik's January 28, 2002 report, which essentially reiterates his previous opinion that appellant experienced symptoms of chronic venous insufficiency of his left lower extremity which were aggravated and accelerated by the duties of his supervisory job he held at the time of the alleged September 1, 1995 recurrence of disability. Dr. Wojtalik thus repeated the assertions he made in reports dated September 20, 1996 and April 29, 1997, related to him by appellant, that this job entailed work requirements which caused him to stand for prolonged periods of time and to do prolonged walking, and which aggravated his swelling and his chronic venous insufficiency. The Office, however, has repeatedly and properly rejected this opinion of Dr. Wojtalik as being of diminished probative value because it is not based on an accurate factual history.⁵ Therefore, the Board finds that Dr. Wojtalik's report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related condition and his alleged recurrence of disability on September 1, 1995. Causal relationship must be established by rationalized medical opinion evidence. Dr. Wojtalik's reports, the only evidence appellant submitted in support of his claim for a recurrence of disability, failed to provide a rationalized, probative medical opinion indicating that his condition as of September 1, 1995 was caused or aggravated by the accepted phlebitis and venous insufficiency conditions.⁶

As there is no medical evidence addressing and explaining why the claimed condition and disability as of September 1, 1995 was caused or aggravated by his accepted employment

⁴ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁵ See *Claudio Vasquez*, 52 ECAB 496 (2001).

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

conditions, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), 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 evidence not previously considered by the Office.⁷ 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.⁸

ANALYSIS -- ISSUE 2

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. He did not submit any additional medical evidence in connection with his May 17, 2002 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of September 1, 1995 causally related to his accepted phlebitis and venous insufficiency conditions. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁸ *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the September 11 and March 1, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 24, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member