

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RILEY J. GAINES and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 03-2090; Submitted on the Record;
Issued January 2, 2004*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On April 19, 2001 the Office accepted appellant's claim for a temporary aggravation of the cervical arthritis condition and temporary aggravation of a right shoulder condition. Appellant was in several automobile accidents but they were not work related. He retired on October 1, 2000.

On April 26, 2001 appellant sought compensation for total disability from June 1992 through October 1, 2001.

In a report dated August 30, 2000, appellant's treating physician, Dr. Thomas Campanella, a Board-certified orthopedic surgeon, stated that he last saw appellant on April 6, 1994 to treat him for occasional pain in the neck and shoulder. He stated that he prescribed physiotherapy which helped appellant and all the movements of his shoulder returned. Dr. Campanella stated that he prescribed exercises for appellant at home and discharged him. He stated that, although he had not seen appellant since 1994, from appellant's history, appellant was still having difficulty with his shoulder. Dr. Campanella stated that, after reviewing the "fact that [appellant] had two automobile accidents while at work, and the fact that he [i]s a mail carrier and has to carry mail on that shoulder continuously," he believed that appellant's work aggravated the condition to his shoulder and neck, and his condition was aggravated by the automobile accidents.

In a duty status report dated February 24, 1997, a doctor restricted appellant to lifting no more than 40 pounds, sitting only 2 hours a day, and bending only 4 hours a day.

On September 13, 1999 Dr. Bartlett M. Saunders, a Board-certified internist, placed restrictions on appellant including four hours of sitting, standing and walking.

On December 22, 1999 a progress note from Dr. Saunders noted “Off work August 2, 1999 [through] September 16, 1999 because of arthritis. Returned to limited work September 17, 1999.”

In an undated letter received by the Office on January 17, 2001, appellant stated that his problem began on June 23, 1992. He stated that his condition was affected by all of the basic functions of the letter carrier craft which included operating a motor vehicle, casing mail, pulling down route, loading and unloading a vehicle, delivery of the mail while walking from house to house, carrying a mail sack weighing up to 35 pounds and delivering parcels weighing up to 80 pounds.

By decision dated June 19, 2001, the Office denied appellant’s claim for disability for the time period June 1992 through October 1, 2001 because the evidence did not show that he had any residuals from his work-related aggravation.

By letter dated December 23, 2001, appellant requested reconsideration of the Office’s decision and submitted additional evidence. Appellant submitted copies of two motor vehicle traffic reports dated April 16, 1972 and February 24, 1997. In a “temporary light-duty request certification” dated February 1999, Dr. Sanders indicated that appellant’s restrictions included intermittent sitting, standing and walking for four hours. In a letter to the postmaster dated September 20, 1999, appellant stated that the station manager granted him four hours of casing daily, and he requested additional light-duty work for four hours a day to be able to work an eight-hour day.

A May 9, 2001 progress note from the Stanocola Medical Clinic documented that appellant had difficulty sleeping because of pain in his neck and right shoulder and that x-rays were reviewed. In a report dated May 17, 2001, in response to the Office’s letter dated April 19, 2001, Dr. Campanella stated that there was no change in appellant’s diagnosis and that appellant had traumatic arthritis of the cervical spine and traumatic arthritis of the shoulder. He stated that although the aggravation from appellant’s doing his duties as a postal carrier had ceased, “the pain has persisted, therefore [he] would consider that this is permanent.” Dr. Campanella stated that, since appellant had not been exposed to work since October 2000, he “should think that the symptoms would have lessened.” He stated that the arthritis still existed and would be considered permanent. Dr. Campanella concluded that, according to the Office’s definition, appellant had a permanent aggravation of a preexisting condition.

Appellant submitted a form with an illegible date, if any, signed by Dr. Saunders. On the form, Dr. Saunders diagnosed chronic arthritis of the spine with intermittent exacerbation which required intermittent treatment but appellant was not currently being treated and was able to work.

In a nonmerit decision dated May 22, 2003, the Office denied appellant’s request for reconsideration, stating that appellant’s December 23, 2001 letter requesting reconsideration did not advance any point of law, fact or medical evidence not previously considered.

The Board finds that the Office properly refused to reopen appellant’s case for further consideration of the merits of his claim pursuant to 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, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2) of the Act.²

In this case, the motor vehicle accident reports dated April 16, 1972 and February 24, 1997 are not relevant to a medical determination of appellant's condition. The May 9, 2001 progress note from the Stanocola Medical Clinic documented that appellant had neck and shoulder pain is duplicative of evidence that was contained in the record. The February 1999 restrictions from Dr. Saunders were contained in the record and do not address whether appellant had a work-related disability for the relevant time period. Further, appellant's September 20, 1999 letter to the postmaster requesting an additional four hours of light work was contained in the record and is not relevant to a medical determination of the nature of appellant's disability, if any. Dr. Saunders' undated form stating that appellant had chronic arthritis of the spine with intermittent exacerbation and was able to work does not specify the dates of treatment, but in any event does not indicate that appellant is disabled and therefore is not relevant. Dr. Campanella's May 17, 2001 medical report in which he opined that appellant's aggravation from his postal duties had ceased but because the pain had persisted, the aggravation was permanent is inconsistent and does not present new and relevant evidence on the issue of whether appellant had a work-related disability from June 1992 through October 1, 2001. Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument or present relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his request for reconsideration.³

¹ Section 10.606(b)(2)(i-iii).

² Section 10.608(a).

³ Section 10.606(b)(2)(i-iii).

The May 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 2, 2004

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member