

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATALIE D. WALLACE and U.S. POSTAL SERVICE,
MEDICAL CENTER STATION, Houston, TX

*Docket No. 03-1986; Submitted on the Record;
Issued May 18, 2004*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for a recurrence; and (2) whether the Office properly denied appellant's request for a hearing, as untimely filed.

On June 16, 1987 appellant, then a 27-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained injuries to her neck and back as a result of a work-related motor vehicle accident. Appellant's claim was accepted for multiple contusions and lumbar sprain and benefits were paid. By decision dated January 10, 1990, the Office terminated appellant's medical and compensation benefits for the reason that the effects of the June 6, 1987 injury had resolved.

On September 17, 2002 appellant filed a claim for recurrence of disability, alleging a recurrence as of July 23, 2002. In a letter to appellant dated February 6, 2003, the Office noted that benefits had been terminated by decision dated January 10, 1990, that one could not file a claim for recurrence for a case that had been previously denied and that appellant should use her appeal rights. By letter dated February 26, 2003, appellant stated that she would like to exercise her appeal rights. By letter to appellant dated March 11, 2003, the Office informed appellant that she must specify which appeal right she wished to exercise.

On April 9, 2003 appellant requested an oral hearing. By decision dated May 22, 2003, the Office denied appellant's request for a hearing as it was not timely filed. The Office further reviewed appellant's request under its discretionary powers, and also denied the request for the reason that the case could be equally well addressed by requesting reconsideration.

The Board finds that the case is not in posture for a decision regarding whether appellant established that she sustained a recurrence of her accepted condition beginning July 23, 2002.

The Board notes that, although the February 6, 2003 letter did not contain appeal rights,¹ it clearly constituted a final decision with respect to appellant's claim for a recurrence. This decision effectively denied the claim for a recurrence of appellant's accepted condition as it unequivocally advised her that the Office would not develop the recurrence claim as her case had been previously denied. It is, therefore, a final decision with respect to a recurrence of her accepted condition beginning July 23, 2002, and is subject to review by the Board.²

Where appellant claims a recurrence of disability due to an accepted employment related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he or she claims compensation is causally related to the accepted injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

Office procedures regarding a claimed recurrence of a medical condition explain that, while the claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the accepted condition, the claims examiner must evaluate the medical evidence in terms of any intervening injuries or newly acquired medical conditions as described on Form CA-2a. If the information provided with Form CA-2a is not sufficient to obtain a clear picture of the employee's activities and health during the period since release from medical care, the claims examiner should request clarification or additional information as indicated.⁴ The record does not indicate how the Office evaluated the evidence submitted by appellant or that it otherwise sought clarification or additional information prior to denying the recurrence claim.

The only reason the Office provided for denying the recurrence claim in this case was, "You cannot file a recurrence for a case that has been previously denied." The Office procedures provide that "it is possible to have a valid claim for recurrence in a denied case if the denial was limited to a specific period of time or particular medical services, and the claim for recurrence addresses a different time period or a change in job duties."⁵ The Office did not explain its finding that it could not develop a recurrence claim in light of this procedural provision. The Board finds that the Office's February 6, 2003 decision does not comport with the Office's

¹ See 20 C.F.R. § 10.126 (regarding the contents of an Office decision).

² 20 C.F.R. § 10.625 provides that final decisions of the Office are subject to review by the Board. Office procedures also contemplate that the Office will adjudicate claims for recurrence except when: (1) the claimant is still receiving continuation of pay; (2) the recurrence is for medical care only and the claim is still in open status; and (3) neither wage-loss compensation nor payment for medical expenses is claimed at present. If one of these exceptions apply, the procedures direct the claims examiner to indicate in the record why not action is being taken. (Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(c) (January 1995)). The record contains no documentation from the Office that any of these exceptions applied.

³ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁴ Federal (FECA) Federal Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

⁵ *Id.* at Chapter 2.1500.4(a) (January 1995).

procedures for developing a recurrence claim and that it contains insufficient findings and statement of reasons to support the denial of the claim.⁶

Consequently, the February 6, 2003 decision must be set aside and the case remanded for further development consistent with Office procedures. Following this and any other development deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim for recurrence of her accepted condition on July 23, 2002. In light of the Board's disposition of this issue, the issue of whether the Office properly denied a hearing is moot.

The decisions of the Office of Workers' Compensation Programs dated February 6 and May 22, 2002 are hereby vacated, and this case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
May 18, 2004

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ 20 C.F.R. § 10.126 (provides that a decision of the Office shall contain findings of fact and a statement of reasons).