United States Department of Labor
Employees' Compensation Appeals Board

TIMOTHY J. CHRISTIE, Appellant	)	
and	)	**Docket No. 03-1103**
	)	**Issued: August 9, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Timothy J. Christie, pro se
Thomas G. Giblin, Esq., for the Director

Oral Argument July 20, 2005

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 24, 2003 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated March 6, 2003 denying his request for reconsideration. He also filed a timely appeal of merit Office decisions dated November 5, September 13 and July 22, 2002 denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a recurrence of disability on and after June 2, 2002 causally related to his April 22, 1985 employment injury; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] Following the docketing of an appeal with the Board on March 24, 2003, the Office issued a decision dated June 2, 2003 which granted appellant a schedule award. As appellant's request for an appeal is on the separate issue of a recurrence of disability than the schedule award issue before the Office, the Board and the Office do not have concurrent jurisdiction. 20 C.F.R. § 10.626; *see also Douglas E. Billings,* 41 ECAB 880 (1990).

FACTUAL HISTORY

On April 22, 1985 appellant, then a 26-year-old distribution clerk, filed a claim for a back injury sustained while unloading sacks of mail from a truck. The Office accepted the conditions of cervical, thoracic and lumbar subluxation and herniated disc L4-5 with laminectomy performed on November 7, 1987. Appellant had intermittent periods of total and partial disability for which he received appropriate compensation. He initially returned to working 8 hours a day with restrictions of no lifting over 50 pounds and no frequent bending. Following a recurrence in 1998, appellant returned to work for four hours a day. After medical development, appellant attempted to increase his number of hours of work. Appellant, however, was not able to work eight hours a day. By letter dated June 28, 2001, the Office authorized four hours of compensation a day. While appellant attempted to increase his hours and was able to work six hours in November 2001, he returned to four hours in December 2001. He stopped work on June 2, 2002 and retired on medical disability on October 18, 2002.

On June 7, 2002 appellant filed a claim alleging that he sustained a recurrence of disability on June 2, 2002. Reports from his treating physician, Dr. Jorge Alfredo Balarezo, a neurosurgeon, were submitted. In a June 3, 2002 report, Dr. Balarezo noted that appellant had experienced severe pain across his lower back and radiation of pain to the right lower extremity about two days earlier due to a severe coughing spell. Dr. Balarezo noted a positive straight leg raising test of 40 degrees on the right side and 60 degrees on the left side. Appellant's trunk flexion was restricted to 50 degrees and he stood with a tilt to the left side because of paravertebral muscle spasm. Motor testing of the lower extremities and sensory testing were normal. An April 10, 2002 magnetic resonance imaging (MRI) scan showed evidence of lateral recess stenosis at L4-5 on the right side, at the surgical site, secondary to a bony spur formation and postoperative fibrosis. Other findings pertaining to L3-4 level were noted. Dr. Balarezo stated that appellant was having difficulty working four hours a day. He additionally noted that, although retraining for a sedentary activity might be a possibility, appellant had difficulties with prolonged sitting or standing. Therefore, Dr. Balarezo opined that appellant had reached a plateau in his medical improvement and was permanently and totally disabled due to his back problem.[2] In a June 6, 2002 report, Dr. Balarezo set forth appellant's subjective complaints of lower back pain radiating to the right lower extremity and noted his objective findings. He opined that appellant was permanently disabled but noted that he would reevaluate appellant to determine whether he could return to his restricted work of four hours a day.

In a June 14, 2002 letter, the Office advised appellant that the evidence submitted in support of his recurrence claim was not sufficient to support that he experienced total disability due to his April 1985 work injury. Appellant was advised of the type of information needed to support his recurrence claim. This included a showing of whether his light-duty job had changed or whether he stopped work due to a spontaneous worsening of his work-related symptoms along with a well-rationalized report from his physician which discussed the history of the events leading to the work stoppage, objective findings and how appellant's current condition was related to factors of his federal employment and due his April 1985 work injury.

[2] Dr. Balarezo noted that appellant had longstanding evidence of atrophy of the right quadriceps and a decreased knee jerk on the left side.

In response, appellant submitted a June 26, 2002 report from Dr. Balarezo who noted seeing appellant on June 3, 2002 and that his pain was localized in the lower back with radiation to both hips, more on the left side, and to the right sciatic distribution. He added that appellant's symptoms increased with activity, standing, sitting and walking. Dr. Balarezo presented objective findings on examination and noted that sensory testing showed slight hypesthesia to pinprick over the lateral aspect of the right thigh. He opined that appellant had severe pain of the lower back and that he was not capable of returning to his restricted position.

By decision dated July 22, 2002, the Office denied appellant's recurrence claim, finding that the evidence did not establish how appellant was medically precluded from performing even light-duty work due to the accepted work injury.

On July 25, 2002 appellant requested reconsideration. In a July 25, 2002 report, Dr. Balarezo provided a chronology of appellant's treatment since his April 1985 injury and noted that appellant had spinal canal stenosis which complicated his recovery. He further noted that appellant had fibrosis and postsurgical scar tissue. Dr. Balarezo listed examination findings and stated that appellant had residual symptoms of sciatic pain in the right lower extremity and some dysesthesia in the left lower extremity. He opined that the residual symptoms were related to the original injury and that appellant was permanently disabled.

In a September 13, 2002 decision, the Office denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant modification of its prior decision.

On September 26, 2002 appellant requested reconsideration and stated that the reports from Dr. Balarezo were cumulative in nature and reflected his on-going job-related medical condition. He submitted a September 24, 2002 report from Dr. Balarezo. In that report, Dr. Balarezo noted that appellant still had significant pain along the lower back and radiating into the right leg. He found that appellant had spasms while standing, difficulty with trunk flexion at 50 degrees, straight leg raising was positive at 50 degrees, weakness of the right quadriceps and also of the right iliopsoas muscle with some atrophy of the right quadriceps. Dr. Balarezo opined that appellant was permanently disabled and that the symptoms he was experiencing were related to the April 1985 work injury.

By decision dated November 5, 2002, the Office denied reconsideration finding that the evidence submitted was insufficient to warrant modification of its prior decision.

On December 4, 2002 appellant requested reconsideration. He noted that the Office had accepted prior recurrences and advised that his condition had worsened and that he could not tolerate four hours of work. Appellant included a December 3, 2002 report from Dr. Balarezo. In that report, Dr. Balarezo noted appellant's subjective complaints and provided his examination findings. He opined that appellant was unable to perform his prior restricted work activity and that he was totally disabled.

By decision dated March 6, 2003, the Office denied reconsideration, without a merit review, finding that appellant failed to submit new and relevant evidence as the evidence was duplicative of evidence previously reviewed.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees' Compensation Act,[3] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[4] A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5] Thus, when an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of his burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[6]

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, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.[7] Where no such rationale is present, the medical evidence is of diminished probative value.[8]

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9]

ANALYSIS -- ISSUE 1

Appellant requested wage-loss compensation for four hours per day for the period June 2, 2002 until his retirement on October 18, 2002. The record reflects that, since June 2001, appellant had been working four hours a day in a light-duty position and receiving wage-loss compensation for the remaining four hours. Absent a brief period of working for six hours a day, appellant worked in this capacity until June 2, 2002, when he stopped work due to an alleged recurrence of disability.

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[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.5(f) (1999).

[5] 20 C.F.R. § 10.5(x).

[6] *See Shelly A. Paolinetti,* 52 ECAB 391, 392 (2001); *see also Terry R. Hedman,* 38 ECAB 222 (1986).

[7] *Ronald A. Eldridge,* 53 ECAB 218, 221 (2001).

[8] *Mary A. Ceglia,* 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

[9] *Dennis M. Mascarenas,* 49 ECAB 215, 218 (1997).

Appellant has not alleged, nor does the evidence reflect, that his light-duty position requirements had changed. Although it is not disputed that appellant has ongoing residuals from his initial injury of April 22, 1985, the medical evidence of record is devoid of sufficient evidence to support that appellant's back condition had worsened to the point of not being able to perform his limited-duty activities for four hours per day. Appellant submitted numerous reports from his attending physician, Dr. Balarezo, a neurosurgeon, which note that appellant's lower back pain started in June 2002 as a result of a coughing spell.[10] All of Dr. Balarezo's reports contain conclusory statements that appellant is totally disabled and not capable of working. However, neither appellant nor his physician provide any explanation as to why he cannot perform his limited-duty job for four hours a day or identify any specific factors of employment which has caused appellant's condition to worsen to the point of being totally disabling. In some of his reports, Dr. Balarezo noted that appellant had difficulties with various positions and activities, but he failed to relate such difficulties to a specific factor of employment or provide an explanation as to why appellant could not perform his restricted limited-duty job of four hours a day. Moreover, Dr. Balarezo did not provide any medical rationale for his opinion that appellant was totally disabled due to his employment injury. He advised that appellant had residuals symptoms from the original injury, but failed to specifically identify what specific objective findings relative to the employment injury precluded appellant from working his restricted limited-duty position for four hours a day. A rationalized explanation is crucial as appellant appears to have spinal canal stenosis and fibrosis which also affects his back condition and which are not accepted conditions in this case. In his reports, Dr. Balarezo did not otherwise explain how appellant's employment-related condition changed or worsened to the point of rendering him totally disabled for all work. The Board has repeatedly held that a medical opinion not fortified by medical rationale is of little probative value.[11] As Dr. Balarezo's reports fail to provide a reasoned explanation as to why appellant's condition worsened in June 2002 as a result of the April 22, 1985 work injury and why appellant was not able to work in his restricted-duty position of four hours a day, his opinion is of little probative value.

For the reasons stated above, the Board finds that appellant failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment condition from June 2 to October 18, 2002.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[12] the Office's regulations provide that a claimant must: (1) show that the Office erroneously

[10] The Board notes that appellant's coughing would not, by itself, exclude the possibility that his disability on and after June 2, 2002 was due to a natural, progressive worsening of his accepted employment injury. *See Mary A. Wright*, 48 ECAB 240, 243 (1996). However, as noted in the text of this decision, the medical evidence is insufficient to establish a causal relationship between the claimed total disability and the accepted employment injury.

[11] *See Brenda L. DuBuque*, 55 ECAB ___ (Docket No. 03-2246, issued January 6, 2004); *see also David L. Scott*, 55 ECAB ___ (Docket No. 03-1822, issued February 20, 2004).

[12] 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).

applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[13] 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.[14] 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.

ANALYSIS -- ISSUE 2

The relevant issue in this case is a medical one, whether appellant sustained a recurrence of disability on June 2, 2002 that was causally related to his April 22, 1985 employment injury. In the case at hand, appellant did not contend that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

However, with respect to the third element, the submission evidence not previously considered by the Office, appellant submitted new evidence which requires review to determine whether it is relevant and pertinent to the issue in this claim. In support of his request for reconsideration, appellant submitted Dr. Balarezo's December 3, 2002 medical report. This report noted appellant's symptoms of lower back pain with pain radiating into his leg and contained Dr. Balarezo's conclusory statement that appellant was permanently and totally disabled. This report is not sufficient to require the Office to conduct a merit review as it is similar to other reports of record from Dr. Balarezo, which the Office previously reviewed. The December 3, 2002 report contained no new information or reasoning to support Dr. Balarezo's opinion that appellant was totally disabled, due to his employment injury, from his limited-duty position of four hours. The Board has held that 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.[15] Inasmuch as Dr. Balarezo's December 3, 2002 report is repetitious of his earlier reports, it is insufficient to require a reopening of the case for a merit review.

For the foregoing reason, appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit any relevant and pertinent new evidence not previously considered by the Office. Accordingly, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability from June 2 to October 18, 2002 and is, thus, not entitled to wage-loss benefits for that period. The Board

[13] 20 C.F.R. § 10.606(b)(1)-(2).

[14] *Id*. at § 10.607(a).

[15] *See Daniel Deparini*, 44 ECAB 657 (1993).

further finds that the Office properly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 6, 2003 and November 5, September 13 and July 22, 2002 are affirmed.

Issued: August 9, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board