

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

NORMA T. PEREZ, Appellant)
and) Docket No. 05-873
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 14, 2005
Tampa, FL, Employer)
Tampa, FL, Employer)

)

Appearances:
Patricia A. Davis-Weeks, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 7, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' nonmerit decision dated July 21, 2004 and January 31, 2005 decision, which denied her request for benefits for a 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 December 10, 2001 causally related to her accepted back and shoulder conditions; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 49-year-old modified distribution clerk, filed a Form CA-2 claim for benefits on June 22, 1993 alleging that she sustained upper back and right shoulder conditions causally related to her employment. The Office accepted the claim for cervical and thoracic sprains and for

right shoulder strain. The statement of accepted facts indicated that appellant sustained injuries to her lower back and left shoulder on July 15, 1983 while lifting a tray of mail over her head, which the Office accepted for lumbosacral strain, herniated nucleus pulposus L4-5, left and tendinitis of the rotator cuff, left shoulder. Appellant returned to work on a limited duty status for six hours per day, five days a week in a modified clerk position in 1986 and had been receiving compensation for loss of wage-earning capacity since that time.

On December 18, 2001 appellant filed a Form CA-7 claim for compensation, requesting compensation for the period December 10 to 14, 2001. On the form appellant stated that the date of injures was July 15, 1983. Appellant submitted a December 11, 2001 disability slip from Dr. Edward N. Feldman, a specialist in orthopedic surgery and the attending physician, which advised that appellant should be kept out of work from December 10 through 16, 2001. The Office treated the claim as one for recurrence of disability.

By letter dated December 27, 2001, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits based on a recurrence of disability. The Office stated that only medical documentation that it had received was Dr. Feldman's December 10, 2001 disability medical slip, which was not sufficient to document a material worsening of her medical condition caused by her accepted conditions. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition as of December 10, 2001 was causally related to her accepted conditions.

Appellant submitted a December 11, 2001 report from Dr. Feldman, who noted appellant's complaints of low back pain, pain radiating down the left leg, tingling in the left leg and foot and muscle spasm. Dr. Feldman performed an examination of the lumbar spine and stated his findings:

"[Appellant] was ambulatory with a severely antalgic gait. There was myonodular spasm present in the paralumbar muscle. Flexion, extension and rotation produce discomfort. Reflexes were equal and symmetrical with no loss of muscle strength. SLR was positive at 60 degrees bilaterally. There were discreet trigger point areas of pain palpable in the paralumbar muscles in conjunction with the myonodular spasm.

"The objective findings and subjective complaints are causally related to her accident of July 13, 1993 and are permanent.

"[Appellant] continues to be symptomatic. Medications were renewed and she will be seen again in four to six weeks. She is severely symptomatic in view of the myonodular spasm with multiple discreet trigger point areas of pain. A series of trigger point injections would be merited and these were performed with good immediate results to the trigger point areas identified. [Appellant's] prognosis for the future is fair."

By decision dated July 21, 2004, the Office denied appellant compensation for a recurrence of her accepted conditions. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of December 10, 2001 was caused or aggravated by the accepted conditions.

On August 16, 2004 appellant requested reconsideration. Appellant submitted copies of the definition of unspecified lumbar and cervical disorders, pursuant to *The American Academy of Orthopaedic Surgeons*, Section/ICD-9 code 724.02 the definition of "antalgic gait" from a reference/resource book and the December 11, 2002 disability slip and return to work note from Dr. Feldman dated December 11, 2001. He also submitted reports dated August 19 and November 6, 2003 from Dr. Feldman, which essentially reiterated his previous findings and conclusions. He did not submit any additional medical evidence contemporaneous with the alleged period of recurrence.

By decision dated January 31, 2005, 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

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 resulted from a previous injury or illness without an intervening injury.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.²

ANALYSIS -- ISSUE 1

In the instant case, the record does not contain any medical opinion showing a spontaneous change in the nature and extent of appellant's injury-related conditions. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability from December 10 to 16, 2001 to her accepted low back, cervical left shoulder and thoracic or right shoulder conditions. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment conditions.

The only medical evidence which appellant submitted consisted of Dr. Feldman's December 11, 2001 report and December 11, 2001 disability slip. The December 11, 2001

¹ 20 C.F.R. § 10.5 (2002).

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

report related appellant's complaints of low back pain which radiated down the left leg and indicated that she experienced muscle spasm with tingling in her left leg and left foot. Dr. Feldman also stated that appellant had a severely antalgic gait with myonodular spasm present in the paralumbar muscle and advised that flexion, extension and rotation produced discomfort. He stated that there were discreet trigger point areas of pain palpable in the paralumbar muscles in conjunction with the myonodular spasm. Dr. Feldman concluded that appellant's objective findings and subjective complaints were causally related to a July 13, 1993 accident were permanent and that her prognosis was fair.³

Dr. Feldman's report and disability slip provided a diagnosis of appellant's current conditions and indicated generally that she complained of disabling pain as of December 10, 2001, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's disability as of December 10, 2001 was causally related to her accepted injury and accepted medical conditions. Appellant's accepted conditions were low back cervical, thoracic and shoulder strains. There is no medical evidence of record of a spontaneous change in these conditions occurred on December 10, 2001. To establish causal relationship between these conditions and the accepted injury, the medical evidence of record would have to explain with medical rationale how these conditions were a consequence of the accepted injury.⁴ Dr. Feldman's reports offer no medical explanation relating these conditions to the accepted injury. Accordingly, the Office properly denied compensation for a recurrence of appellant's work-related back and right shoulder conditions in its July 21, 2004 decision.

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.⁵ 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.⁶

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Appellant submitted copies of medical literature containing definitions of unspecified lumbar and cervical disorders and of "antalgic gait," but this material is not relevant

³ There is no indication that appellant sustained any work-related accident on July 13, 1993. Dr. Feldman may have been referring to the employment incident which occurred on July 15, 1983.

⁴ *Carlos A. Marrero*, 50 ECAB 117 (1998).

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

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

because it does not constitute medical evidence pursuant to section 8101(2). Further, the Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁷ The reports from Dr. Feldman dated August 19 and November 6, 2003, merely restated the findings and conclusions he submitted in previous reports, which were considered in the Office's prior merit review. These reports did not provide any rationalized medical opinion pertinent to the relevant issue of whether appellant sustained a recurrence of disability from December 10 to 16, 2001 causally related to her accepted back and shoulder conditions. Moreover, Dr. Feldman's December 11, 2001 report and December 11, 2001 disability slip were previously considered and rejected by the Office in a previous decision and are therefore cumulative and repetitive. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of December 10, 2001 causally related to her accepted back and right shoulder conditions. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

⁷ See *David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2005 and July 21, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 14, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board