

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

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**JACK E. BOWLES, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hillsdale, MI, Employer**

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**Docket No. 05-1892  
Issued: April 6, 2006**

*Appearances:*  
*Jack E. Bowles, pro se*  
*Office of 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 September 13, 2005 appellant filed a timely appeal from the March 1, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim for a recurrence of disability, and a June 24, 2005 decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether appellant sustained a recurrence of disability on February 24, 2003, causally related to his February 26, 1997 employment injury; and (2) whether the Office properly denied further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

Appellant, a 55-year-old postmaster, sustained a traumatic injury in the performance of duty on February 26, 1997. He was playing racquetball at the time of his injury.<sup>1</sup> Appellant fell,

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<sup>1</sup> Appellant was on travel status in Grand Rapids, MI. He was playing racquetball at a health club affiliated with his hotel.

struck his head against a wall and lost consciousness. The Office accepted the claim for closed head injury, head laceration and traumatic seizures.<sup>2</sup> Appellant resumed his regular duties, but later sustained a recurrence of disability beginning September 28, 1998. He worked part time beginning in November 1999 and resumed his full duties effective May 31, 2000.

On February 24, 2003 appellant lost consciousness at work. He was seated at his desk working at a computer when he stood up and fell to the floor, landing on his face. Appellant filed a notice of recurrence of disability on April 29, 2003, alleging that his February 24, 2003 fall was causally related to the February 26, 1997 employment injury due to a seizure. He also complained of unmanageable head pain since February 24, 2003. Appellant stopped working on April 25, 2003.

Dr. Keith W. Baron, Board-certified in emergency medicine, examined appellant on February 24, 2003 at the Hillsdale Community Health Center emergency room. He noted that appellant was slumped over at work and found essentially unconscious. Dr. Baron's clinical impression was "[a]cute syncope, rule out seizure." He also noted a history of chronic headaches. Dr. Baron released appellant to the care of his treating physician, Dr. L. Dustin Kimball, III, a family practitioner, who admitted him to the hospital. The hospital treatment notes for February 24 and 25, 2003 indicated a syncopal episode with confusion, which had resolved. Dr. Kimball also reported headaches and possible seizure and a history of traumatic brain injury in 1970 and 1997.

A neurological examination during appellant's hospitalization was noted to be unremarkable. The neurologist, Dr. Lesley B. McConville was uncertain whether appellant's loss of consciousness was the result of a syncopal episode or seizure activity. He commented that appellant's loss of consciousness was suspicious for seizure activity because of a prior history of seizures. Dr. McConville also indicated that appellant was at risk for further seizures due to at least two prior serious head injuries and perhaps a stroke. Additionally, he expressed concern over appellant's use of Imitrex and Vicodan, noting that the latter narcotic was well known to produce analgesic rebound headaches.

Dr. Barbara Schauble, a neurologist, reported on April 26, 2003 that she examined appellant for "[one] unprovoked spell of unclear etiology" that occurred on February 24, 2003. Appellant presented with a transient loss of consciousness, for which she offered a differential diagnosis of syncope versus seizure. Dr. Schauble also reported that appellant suffered from migraine headaches.

In a May 12, 2003 report, Dr. Kimball characterized the February 24, 2003 incident as a syncopal episode. He noted that appellant had a severe headache just prior to the February 24, 2003 incident. Dr. Kimball attributed appellant's recent syncopal episode and headaches to his prior head injury in 1997. He further stated that it was also related "in some way" to an injury appellant sustained in Vietnam in 1970. Dr. Kimball provided a similar report on July 18, 2003, noting that appellant's current condition was a continuation of his problems stemming from the

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<sup>2</sup> Appellant reported a prior history of seizures in 1970 after sustaining a head injury in Vietnam. He further indicated that after a "couple brain operations in Japan" he had no more problems with seizures.

1997 injury. He stated that appellant was unable to work due to cognitive impairments as well as persistent chronic pain in the form of headaches.

In a decision dated October 8, 2003, the Office denied appellant's claim for a recurrence of disability.

Appellant requested a review of the written record and submitted additional medical evidence. In an October 30, 2003 report, Dr. Kimball reiterated that appellant's current disability was a continuation of his previous disability. In an October 31, 2003 report, Dr. Schauble indicated that she treated appellant for one episode of loss of consciousness where he was found unconscious on the floor. According to Dr. Schauble, appellant complained of a severe headache just prior to the February 2003 incident. She explained that because appellant was found on the floor the question of syncope versus seizure was raised. However, the work-up she performed was negative for seizure. Dr. Schauble further indicated that appellant's headaches were chronic since his fall in February 1997 and were aggravated due to his most recent fall in 2003. She advised that appellant was currently disabled due to refractory pain, which was most likely exacerbated due to his fall in 2003 at the office.

By decision dated February 4, 2004, the Office hearing representative affirmed the October 8, 2003 decision.

Appellant requested reconsideration on May 12, 2004. He submitted February 23 to 27, 2004 treatment records from the Mayo Clinic Neurology Department. Dr. Alcibiades J. Rodriguez, an internist at the Mayo Clinic examined appellant and provided a March 2, 2004 report. Dr. Rodriguez listed a final diagnosis of headaches, an episode of loss of consciousness -- seizures versus syncope, depression and probable analgesic rebound.

In a decision dated March 1, 2005, the Office denied modification of the February 4, 2004 decision. Appellant filed another request for reconsideration on June 13, 2005, but did not submit any additional evidence. The Office denied appellant's request for reconsideration by decision dated June 24, 2005.

### **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 or new exposure to the work environment that caused the illness.<sup>3</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>4</sup>

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<sup>3</sup> 20 C.F.R. § 10.5(x) (1999).

<sup>4</sup> *Id.*

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>5</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>6</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Dr. Kimball is the only physician of record who attributed appellant's current condition at least in part to the February 26, 1997 employment injury. His several reports, however, do not contain sufficient rationale to discharge appellant's burden of proving that his loss of consciousness and fall of February 24, 2003 constitutes a recurrence of disability is causally related to the February 26, 1997 injury. When Dr. Kimball examined appellant shortly after the February 24, 2003 fall, he reported a syncopal episode with confusion, which had resolved. Additionally, he reported headaches and possible seizure and a history of traumatic brain injury in 1970 and 1997. But at that time Dr. Kimball did not specifically attribute appellant's condition to the February 26, 1997 employment injury.

In a May 12, 2003 report, Dr. Kimball reported that appellant had a severe headache just prior to the February 24, 2003 incident and he attributed the syncopal episode and headaches to appellant's prior head injury in 1997. Dr. Kimball stated that it was also related "in some way" to injury appellant sustained in Vietnam in 1970. In reports dated July 18 and October 30, 2003, he reiterated that appellant's current condition was a continuation of his problems stemming from the 1997 injury. Dr. Kimball, however, failed to provide adequate medical rationale in support of his stated conclusion on causal relationship. He did not explain how appellant's February 24, 2003 loss of consciousness and fall was related to the 1997 "in some way" to appellant's 1970 injury in Vietnam. Dr. Kimball did not offer a full history of appellant's condition for the six years between the 1997 injury to 2003. The stated opinion on causal relationship is speculative in nature. Appellant failed to prove that the claimed recurrence of disability was causally related to the February 26, 1997 injury.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.<sup>9</sup> Section 10.606(b)(2) of Title 20 of the

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<sup>5</sup> 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>6</sup> See *Helen K. Holt*, *supra* note 5.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>8</sup> See *Helen K. Holt*, *supra* note 5.

<sup>9</sup> 5 U.S.C. § 8128(a).

Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>10</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's June 13, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>12</sup>

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any evidence with his June 13, 2005 request for reconsideration. As there was no new and relevant evidence for the Office to consider, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>13</sup> Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the June 13, 2005 request for reconsideration.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability on February 24, 2003, causally related to his February 26, 1997 employment injury. The Board further finds that it properly denied appellant's request for a review of the merits of his claim.

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<sup>10</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>11</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii) (1999).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2)(iii) (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24 and March 1, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2006  
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