

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

MARIE H. REYNOLDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Everett, WA, Employer**

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**Docket No. 05-1140
Issued: March 14, 2006**

Appearances:

*John E. Goodwin, Esq., for the appellant
Miriam D. Ozur, Esq., for the Director*

Oral Argument February 15, 2006

DECISION AND ORDER

Before:

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

JURISDICTION

On April 27, 2005 appellant, through her attorney, filed a timely appeal of a September 10, 2004 merit decision of the Office of Workers' Compensation Programs, denying modification of its August 28, 2001 decision which terminated her wage-loss compensation effective that date, and a March 29, 2005 nonmerit decision which denied her request for reconsideration. Pursuant to 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 established that she had any continuing employment-related disability after August 28, 2001; and (2) whether the Office properly denied her request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been on appeal. In a March 22, 2004 decision, the Board affirmed an Office hearing representative's July 8, 2002 decision which affirmed the August 28,

2001 termination of appellant's wage-loss compensation effective that date.¹ The Board found that the June 13, 2001 medical opinion of Dr. Thomas J. Degan, an attending Board-certified orthopedic surgeon, that appellant's condition was fixed and stable and that she could return to work without restriction was sufficient to establish that appellant no longer had any employment-related disability. The Board found that she failed to establish that she had any continuing employment-related disability after August 28, 2001. The Board determined that Dr. Degan's August 31, 2001 prescription note which indicated that appellant was unable to lift over 20 pounds secondary to the January 15, 1999 employment injury failed to provide a rationalized opinion on the causal relationship between her disability and accepted employment injury.² The facts and the history contained in the prior decision are incorporated by reference. The facts and the history relevant to the present appeal are set forth.

On January 15, 1999 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that she experienced pain in her right elbow on that date after she struck it on a metal container. The Office accepted her claim for right lateral epicondylitis and paid appropriate compensation. On April 6, 2000 appellant underwent an arthroscopic lateral release of the right elbow which was performed by Dr. Degan. He also treated her for an impingement syndrome and degenerative disease of the acromioclavicular region and performed surgery on the right shoulder on January 11, 2001.³

Following the Board's March 22, 2004 decision, appellant, through her attorney, requested reconsideration before the Office by letter dated August 4, 2004. She submitted a May 18, 2004 letter in which Dr. Degan informed the Office that her ability to return to work was probably best characterized by a physical capacity evaluation which found that appellant had a 20-pound lifting restriction. He further stated:

"I think the letter in June 2001 was in error with regard to [appellant] being able to return to full[-]duty work as a letter carrier, as I do not think the evidence of the physical capacity evaluation was in support of that and to my best recollection was that she could return to a full work schedule doing light[-]duty work as she had an intervening back strain, which had even more decreased her work in the interim between the physical capacity evaluation and the shoulder becoming stable and the letter which was sent to you. The restrictions of March 2001 should remain in effect."

By decision dated September 10, 2004, the Office denied modification of its prior decision. The Office found that Dr. Degan's May 18, 2004 letter did not explain whether the nonwork-related right shoulder injury or intervening back strain caused him to change his opinion about appellant's ability to work without restriction. The Office concluded that

¹ In the August 28, 2001 termination decision, the Office indicated that medical treatment was authorized for residuals of the accepted employment-related right lateral epicondylitis condition.

² Docket No. 03-568 (issued March 22, 2004).

³ The Board notes that the Office has not accepted appellant's right shoulder condition as related to the January 15, 1999 employment injury.

appellant had not provided sufficient evidence to verify that her right elbow condition prevented her from returning to work.

In a December 20, 2004 letter, appellant requested reconsideration. She submitted a November 15, 2004 treatment note from Dr. Degan, who indicated that she was doing much better while taking Naprosyn and that she wished to return to work. He stated that, when appellant lifted or performed heavier work, her elbow tended to flare up. Dr. Degan recommended continuation of the 20-pound weight lifting restriction when she performed her work duties. Dr. Degan stated that this restriction had been in effect since appellant's surgery and that he did not believe she could lift 70 pounds as required by her job.

By decision dated March 29, 2005, the Office denied appellant's request for reconsideration on the grounds that she failed to submit new evidence or legal argument not previously submitted or evidence which addressed the relevant issue in the case.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁵ After termination or modification of compensation benefits clearly warranted on the basis of the medical evidence, the burden of proof for reinstating compensation benefits shifts to the claimant.⁶

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Id.*

⁶ *See Franklin D. Haislah*, 52 ECAB 457 (2001).

⁷ *Id.*

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

In the March 22, 2004 decision, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective August 28, 2001. Therefore, the burden of proof shifted to appellant to establish that she still has residuals of her accepted employment injury.¹⁰ The relevant medical evidence regarding any employment-related disability after August 28, 2001 consists of reports from Dr. Degan. On May 18, 2004 he stated that appellant's ability to return to work was based on a physical capacity evaluation which found that she had a 20-pound lifting restriction. Dr. Degan further stated that he made an error in his June 13, 2001 report regarding her ability to perform full-duty work as a letter carrier as the findings of the physical capacity evaluation did not support his opinion. He also related that appellant sustained an intervening back strain between the physical capacity evaluation and the shoulder becoming stable and the letter he sent to the Office which decreased her ability even more to return to full-duty work. He recommended that the March 2001 restrictions remain in effect. Dr. Degan did not provide a reasoned opinion in a narrative report to explain why he revised his opinion expressed on June 13, 2001 regarding appellant's work status. He provided a brief statement that she could not return to full-duty work without a 20-pound lifting restriction. Dr. Degan did not attribute appellant's back condition to the accepted January 15, 1999 employment injury and noted that there had been an intervening injury. The Board finds that his May 18, 2004 letter is insufficient to establish that appellant had any continuing employment-related disability after August 28, 2001.

As appellant did not submit rationalized medical evidence establishing that she has any continuing disability causally related to her accepted January 15, 1999 employment-related injury, after August 28, 2001, she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹¹ the Office regulations provide that a claimant must: (1) show that the Office erroneously 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.¹² To be entitled to a merit review of an Office decision denying or terminating benefits, a claimant also must file his or her application for review within one year of the date of that decision.¹³ 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.

¹⁰ *Gayle Harris*, 52 ECAB 319 (2001).

¹¹ 5 U.S.C. §§ 8101-8193. 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).

¹² 20 C.F.R. § 10.606(b)(1)-(2).

¹³ *Id.* at § 10.607(a).

ANALYSIS -- ISSUE 2

On December 20, 2004 appellant requested reconsideration of the Office's September 10, 2004 decision, denying modification of the Board's March 22, 2004 decision which found that she had no employment-related disability after August 28, 2001. Thus, the relevant underlying issue in this case is whether appellant has any continuing disability causally related to the January 15, 1999 employment injury after August 28, 2001.

Dr. Degan's November 15, 2004 treatment note indicated that appellant's elbow tended to flare-up while lifting or performing heavy work. He recommended that she be limited to lifting no more than 20 pounds while performing her work duties. Dr. Degan stated that this restriction had been in effect since appellant's surgery and that he did not believe she could lift 70 pounds as required by her job. The Board has held that the submission of evidence that repeats or duplicates that already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴ Dr. Degan's November 15, 2004 treatment note, while new, is repetitive of his August 31, 2001 prescription note previously of record and reviewed by the Office and the Board.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.¹⁵

CONCLUSION

The Board finds that appellant failed to establish that she had any continuing employment-related disability after August 28, 2001. The Board further finds that the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁴ *Helen E. Paglinawan*, 51 ECAB 591 (2000); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁵ *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2005 and September 10, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 14, 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