United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 06-263**
	)	**Issued: November 22, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Riverdale, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2005 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated September 23 and May 27, 2005 denying her requests for reconsideration and a January 28, 2005 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case, as well as the nonmerit decisions dated September 23 and May 27, 2005.

ISSUES

The issues are: (1) whether appellant has established a recurrence of an accepted medical condition on or after April 2004; and (2) whether the Office properly refused to reopen the claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant has five accepted traumatic injuries to her back that have been combined in a single case record. The Office accepted that she sustained a lumbar strain on December 19,

1981,[1] an acute low back strain, cervical strain and psychogenic pain disorder on December 17, 1985, aggravation of degenerative disc disease C5-6 and C6-7 on May 10, 1988, cervical strain, lumbar strain and herniated C6-7 disc on November 28, 1988 and a lumbar strain on June 19, 1999.

On August 25, 2004 appellant filed a recurrence of disability claim (Form CA-2a) and checked a box "medical treatment only." She indicated that she had been on leave without pay following carpal tunnel surgery and was awaiting a decision on that claim. With respect to the date of the original injury, appellant reported December 17, 1985 and "1989 and 1990." The date of the recurrence was reported as April 2004. Appellant reported that she had pain and stiffness in her neck.

In an April 30, 2004 report, Dr. Lennard George, an orthopedic surgeon, noted that appellant had a history of cervical fusion due to spondylosis. He diagnosed cervical spondylosis and opined that there was a small likelihood of further improvement. Appellant also submitted reports dated June 4 and 9 and July 6, 2004 from Dr. Phillip Schneider, an orthopedic surgeon. On June 4, 2004 he indicated that appellant had neck pain radiating into her right shoulder and arm, which she said dated back to an employment injury. Dr. Schneider noted that she had a 1991 cervical fusion surgery. He diagnosed C4-5 stenosis, C5-6 discectomy and fusion and C6-7 degenerative disease in the June 9, 2004 report. Dr. Schneider stated that he needed to look at the prior surgery report and thought appellant would need a C4-5 discectomy and fusion. He indicated in the July 6, 2004 report that the surgery was performed in 1989 and recommended C4-5 surgery. In his history Dr. Schneider noted that appellant still complained of severe pain in her neck and right arm "which she dates back for many years to a work-related injury."

By decision dated January 28, 2005, the Office denied the recurrence claim on the grounds that the medical evidence was insufficient to establish the claim. Appellant requested reconsideration by letter dated March 3, 2005. She resubmitted the July 6, 2004 report from Dr. Schneider. In a decision dated May 27, 2005, the Office found that the request for reconsideration was insufficient to warrant further merit review of the claim.

On June 28, 2005 appellant submitted additional reports from Dr. Schneider dated February 18 and March 18, 2005. Dr. Schneider stated that she showed him records of surgery in 1990 for the C4-5 and C5-6 levels. He indicated that appellant had the disease at the C4-5 level which required surgery. Dr. Schneider stated, "even if [the C4-5 condition] was not part of the original injury, which it is, this would be directly related to the injury since this is adjacent level disease. There is an abundant amount of scientific evidence and research which indicates the probability of adjacent level disease above a fusion." Dr. Schneider also stated that appellant had pseudoarthritis of C6-7 was clearly a complication of surgery for her employment injury and he concluded that "there is a reasonable degree of medical certainty that the above required surgery is directly related to her work injury dating back to 1989." In a letter dated August 14, 2005, appellant requested reconsideration and noted that she had submitted the February 18 and March 18, 2005 reports from Dr. Schneider.

[1] The case was before the Board on a prior appeal with respect to the December 19, 1981 injury. The Board affirmed an April 19, 2000 nonmerit decision denying a request for reconsideration of a November 15, 1985 decision finding that residuals of the injury had ceased as of September 9, 1982.

By decision dated September 23, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant further merit review of the claim. It stated, with respect to the February 18 and March 18, 2005 reports from Dr. Schneider, that appellant had failed to enclose the reports and the evidence was not presented to the Office.

LEGAL PRECEDENT -- ISSUE 1

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. 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 sound medical reasoning.[2]

A recurrence of disability is defined under the Office's implementing federal regulations as the 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.[3] A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there is no work stoppage."[4] When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the claimant's current condition and the previous work injury.[5]

ANALYSIS -- ISSUE 1

Appellant filed a Form CA-2a indicating that she was claiming the recurrence of an employment-related cervical condition on or after April 2004. She was not working but it appeared that appellant was claiming disability for work due to a carpal tunnel condition, which is not before the Board on this appeal. The evidence of record established that the Office had accepted a cervical strain on December 17, 1985, aggravation of cervical disc disease at C5-6 and C6-7 on May 10, 1988 and cervical strain and herniated C6-7 disc on November 28, 1988.

The medical evidence that was before the Office at the time of the January 28, 2005 decision is not of sufficient probative value to meet appellant's burden of proof. Dr. Schneider indicated that he was recommending C4-5 surgery, but he did not provide a complete history of the employment injuries or an opinion on causal relationship between appellant's condition and the employment injuries. To be of probative value the medical report must contain a reasoned

[2] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

[3] 20 C.F.R. § 10.5(x).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

[5] *Id.*, Chapter 2.1500.5(b) (September 2003).

medical opinion based on a complete and accurate background.[6] There was no probative medical evidence on the issue presented. It is appellant's burden of proof and the Board finds that she did not meet her burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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 new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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.[7]

Since the Board's jurisdiction of a case is limited to reviewing the evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.[8]

ANALYSIS -- ISSUE 2

The record indicates that appellant did submit the February 18 and March 18, 2005 reports from Dr. Schneider regarding her cervical condition. The Office did not review the evidence finding that she had failed to submit the identified evidence. As noted above, it is critical that the Office review the relevant evidence. Since appellant did submit additional evidence and it did not review the evidence of record, the case will be remanded to the Office for proper consideration of the evidence. After such further development as the Office deems necessary, it should issue an appropriate decision.

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[6] *See Lourdes Davila*, *supra* note 2.

[7] *Eugene F. Butler*, 36 ECAB 393 (1984).

[8] *William A. Couch*, 41 ECAB 548 (1990).

CONCLUSION

Based on the evidence before the Office at the time of the January 28, 2005 decision it was insufficient to establish appellant's claim for a recurrence of a medical condition. She did submit evidence on reconsideration that was not considered by the Office and the case is remanded for proper consideration of the evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 27 and January 28, 2005 are affirmed. The decision dated September 23, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 22, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board