United States Department of Labor
Employees' Compensation Appeals Board

N.H., Appellant	)	
and	)	**Docket No. 07-441**
	)	**Issued: April 25, 2007**
U.S. POSTAL SERVICE, POST OFFICE, North Hollywood, CA, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 6, 2006 appellant filed a timely appeal from a December 15, 2005 merit decision of the Office of Workers' Compensation Programs finding that she had failed to establish a recurrence of medical condition, and January 23 and November 17, 2006 nonmerit decisions denying her requests for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of medical condition causally related to her January 25, 1999 employment injury; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 27, 2006 appellant, then a 44-year-old letter carrier, filed a claim for a traumatic injury to her back occurring on January 25, 1999 in the performance of duty. The

Office accepted her claim for lumbosacral strain.[1] Appellant returned to light-duty employment on May 12, 1999.

Appellant was treated by Dr. Peter Hugh, Board-certified in the area of family medicine. On October 3, 2000 Dr. Hugh noted that appellant continued to experience significant pain in the lumbar spine due to her January 25, 1999 work injury. An April 15, 1999 report of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed mild dessication of L2, L3-4, L5-S1 intervertebral discs. Dr. Hugh stated that appellant had minimal disc bulges at L2-3 and L3-4 areas. He further indicated that her condition would be aggravated by driving and lifting heavy objects at work and that bending caused lower back pain radiating down to the buttock area. Dr. Hugh reported that his requests for an orthopedic evaluation had been denied by the Office. The record also contains duty status reports from Dr. Hugh dated December 17, 2000, January 16, March 26, April 30 and October 30, 2001, which diagnosed herniated disc and lumbar radiculopathy related to appellant's January 1999 work injury. The record contains numerous physicians' notes and work slips from Harriman Jones Medical Group, bearing illegible signatures, for the period August 16, 2000 through October 30, 2001. The record also contains a January 17, 2001 report of an MRI scan of appellant's lumbar spine.

On November 5, 2005 appellant submitted a letter requesting that her case be reopened. She stated that she had obtained an appointment with Dr. Hugh, after the employing establishment asked her for a medical update. Appellant discovered that her case had been closed, when the Office refused to pay her medical benefits.

In support of her request, appellant submitted an October 6, 2005 duty status report from Dr. Hugh, which reflected that her condition was permanent and stationary. Dr. Hugh noted that the date of injury was January 25, 1999 and provided a diagnosis of lumbosacral strain. He stated that he had advised appellant to resume working January 27, 1999. Dr. Hugh recommended that she be restricted from lifting or carrying more than 15 pounds for more than four hours per day; standing or walking for more than four hours per day; sitting for more than three hours per day; or pulling, pushing or grasping more than two hours per day. He further recommended that appellant be restricted from any climbing, kneeling, bending, stooping, twisting or fine manipulation. The record contains an October 6, 2005 return to work slip from Dr. Hugh indicating that appellant was able to return to work on October 7, 2005 and a receipt for services rendered by Dr. Hugh on October 6, 2005 in the amount of $70.00.

By letter dated November 15, 2005, the Office informed appellant that it had received her November 5, 2005 claim for benefits. The Office requested that she submit a statement describing why she believed her current disability or need for medical care was due to her employment injury and notified her that she should obtain a narrative report from her attending physician addressing her need for continuing medical treatment, the extent of any disability and its relationship to her accepted employment injury. The Office provided appellant 30 days to submit the requested information.

[1] The Office's December 15, 2005 decision reflects that appellant's claim was accepted for lumbosacral strain. However, the record does not contain documentation that the Office accepted appellant's claim.

In a narrative statement dated December 12, 2005, appellant described her duties upon return to work, and stated that she had experienced no new injuries subsequent to the accepted January 1999 injury. She alleged that she had remained in constant pain since the original injury. Appellant submitted an electronic print out of a schedule of patient appointments with Dr. Bijal V. Patel, a Board-certified internist, for the period August 5, 2002 through August 27, 2004.

By decision dated December 15, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of medical condition due to her accepted employment injury. The Office informed her that no further medical treatment was authorized and any prior authorization was terminated.

In a form dated January 9, 2006, appellant requested reconsideration of the Office's December 15, 2005 decision. She submitted a copy of a December 7, 2005 limited-duty job offer from the employing establishment, reflecting that on December 14, 2005 she accepted a modified carrier position, "under protest." By decision dated January 23, 2006, the Office denied appellant's request for merit review, finding that she had failed to raise a substantial legal question or to submit any new and relevant evidence.

On November 5, 2006 appellant again requested reconsideration of the Office denial of her claim. She stated that the employing establishment had asked her to obtain Dr. Hugh's October 6, 2005 report and that she was "staggered to learn that [her] case was closed." Appellant indicated that she was unaware that she was obligated to submit paperwork to the Office every year. In support of her request, she submitted duplicates of previously submitted documents, including an October 3, 2000 letter from Dr. Hugh and an electronic print out of a schedule of patient appointments with Dr. Patel for the period August 5, 2002 through August 27, 2004. Appellant submitted a November 12, 2003 memorandum to appellant from the employing establishment indicating that she had been reassigned due to work limitations provided by her physician.

By decision dated November 17, 2006, the Office denied appellant's request for reconsideration on the grounds that appellant failed to submit sufficient evidence to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[3] In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition causally related to her January 25, 1999 employment injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with

[2] 5 U.S.C. §§ 8101-8193.

[3] *Edward W. Spohr*, 54 ECAB 806 (2003).

sound medical rationale.[4] Where no such rationale is present, the medical evidence is of diminished probative value.[5]

Office regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.[6]

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN [as needed], or computed by the claims examiner from the date of last examination.), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[7]

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish a recurrence of her accepted medical condition. The Office accepted appellant's claim for lumbosacral strain. Appellant returned to light-duty employment on May 12, 1999. She has not alleged that she stopped work due to a withdrawal or change in her light-duty position. Appellant further has not submitted any medical evidence showing that she was disabled from her light-duty position as of the date that she ceased working for the employing establishment. She contends, however, that she requires further medical treatment for her continuing employment-related condition.

The record reflects that appellant was treated for her accepted condition by Dr. Hugh, and other members of the Harriman Jones Medical Group, through October 30, 2001. Appellant submitted an electronic print out of a schedule of patient appointments with Dr. Patel for the period August 5, 2002 through August 27, 2004. There is no evidence of record establishing that appellant received medical treatment for her accepted condition between August 27, 2004 and October 6, 2005, when she returned to Dr. Hugh. As computed from the date of Dr. Hugh's last examination on August 27, 2004, the treatment on October 6, 2005 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between her current condition and the previously accepted work

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

[5] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

[6] 20 C.F.R. § 10.5(y).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *See id*., Chapter 2.1500.5(a).

injury.[8] Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.[9]

Appellant had the burden of submitting sufficient medical evidence to document the need for further medical treatment.[10] She was responsible for submitting a report from a physician containing a description of the objective findings and supporting causal relationship between her current condition and the accepted work injury.[11] The medical evidence submitted was insufficient to establish her claim. In an October 6, 2005 duty status report, Dr. Hugh indicated that appellant's condition was permanent and stationary. He noted that the date of injury was January 25, 1999; provided a diagnosis of lumbosacral strain; and recommended that she be restricted from lifting or carrying more than 15 pounds for more than four hours per day; standing or walking for more than four hours per day; sitting for more than three hours per day; or pulling, pushing or grasping more than two hours per day. Dr. Hugh further recommended that appellant be restricted from any climbing, kneeling, bending, stooping, twisting or fine manipulation. His report did not contain a description of the objective findings and a reasoned opinion supporting a causal relationship between appellant's current condition and the previously accepted work injury, as required by Office procedures.[12] Therefore, it is of diminished probative value. Dr. Hugh's report merely reflected that he examined appellant. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.[13] In an October 6, 2005 return to work slip, Dr. Hugh indicated that appellant was able to return to work on October 7, 2005. However, he did not provide a diagnosis or any opinion regarding the cause of appellant's condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[14]

The Office informed appellant of the type of evidence necessary to establish her claim by letter dated November 15, 2005. In response, she submitted only a narrative statement alleging that she had been in constant pain since the original injury. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[15] Appellant also submitted an

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

[9] *See J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006).

[10] 20 C.F.R. § 10.5(y).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

[12] *Id.*

[13] 20 C.F.R. § 10.5(y).

[14] *See Michael E. Smith*, 50 ECAB 313 (1999).

[15] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

electronic print out of a schedule of patient appointments with Dr. Patel from August 5, 2002 through August 27, 2004. The evidence submitted did not address the relevant issue, namely, whether appellant has a documented need for further medical treatment after release from treatment of the accepted condition. Consequently, she has not established a recurrence of a medical condition, and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[16] vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[17] Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[18]

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[19] The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[20]

Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[21]

ANALYSIS -- ISSUE 2

Appellant's reconsideration requests dated January 9 and November 5, 2006 neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she 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 her claim based on the first and second above-noted requirements under section 10.606(b)(2).

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[16] 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[17] *Raj B. Thackurdeen*, 54 ECAB 396 (2003); *Veletta C. Coleman*, 48 ECAB 367 (1997).

[18] 20 C.F.R. § 10.608(a).

[19] 20 C.F.R. § 10.606(b)(1)-(2); *see Sharyn D. Bannick*, 54 ECAB 537 (2003).

[20] 20 C.F.R. § 10.608(b).

[21] *Id.*

Appellant also failed to meet the third requirement of submitting relevant and pertinent new evidence in both instances. In support of her January 9, 2006 request, appellant submitted a copy of a December 7, 2005 limited-duty job offer from the employing establishment in accordance with her doctor's recommended restrictions. This evidence is not relevant to the issue at hand, namely, whether appellant has established a documented need for further medical treatment after release from treatment of the accepted condition. In support of her November 5, 2006 request, appellant submitted duplicates of previously submitted documents, including an October 3, 2000 letter from Dr. Hugh and an electronic print out of a schedule of patient appointments with Dr. Patel for the period August 5, 2002 through August 27, 2004. 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.[22] Appellant also submitted a November 12, 2003 memorandum to her from the employing establishment indicating that she had been reassigned due to work limitations provided by her physician. Again, this document does not constitute medical evidence establishing appellant's need for further medical treatment and is, therefore, irrelevant. The Board finds that the Office properly denied appellant's requests for a review on the merits, as she failed to meet any of the three requirements of section 10.606(b)(2).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a medical condition causally related to her January 25, 1999 employment injury. The Board further finds that the Office properly denied appellant's requests for a merit review.

[22] *Roger W. Robinson*, 54 ECAB 846 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 17 and January 23, 2006 and December 15, 2005 are affirmed.

Issued: April 25, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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