United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 08-267**
	)	**Issued: May 16, 2008**
DEPARTMENT OF VETERANS AFFAIRS, ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 5, 2007 appellant filed a timely appeal from a February 23, 2007 merit decision denying her claim for recurrence of disability, and an October 2, 2007 nonmerit decision denying 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 appeal.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability or recurrence of her medical condition on or subsequent to September 14, 2005 that was causally related to her accepted 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 May 14, 2001 appellant, a 40-year-old program support assistant, filed a traumatic injury claim alleging that she injured her left ankle when she slipped and fell at work on

April 5, 2001. Her claim was not initially developed by the Office, as she did not lose time from work, or incur medical expenses, as a result of the alleged injury.

The record contains an April 5, 2001 report from an employing establishment physician reflecting that appellant was treated for an injury and recommending that her work duties be restricted for two weeks, with limited weight bearing on the left knee. Accompanying notes contained a history of injury, as reported by appellant, indicating that she had injured her left knee and right hip when she fell down two steps at work on April 5, 2001. On April 20, 2001 appellant was approved by another employing establishment physician to return to work full duty.

On July 18, 2006 appellant filed a claim for recurrence of disability as of September 14, 2005, noting that she stopped working on October 18, 2005. She alleged that her left knee began causing pain, discomfort, and limited mobility over the years. Indicating that appellant had not had any problems with her left knee prior to her April 5, 2001 fall, she stated her belief that the impact of the fall contributed to her current discomfort and pain in her left knee. She returned to her regular duties, without any limitations. In an accompanying statement, appellant indicated that, in the years following her April 5, 2001 injury, her mobility was affected, and the pain progressed, to the point that she required medical attention on September 14, 2005. She also stated that she had not sustained any other injury since April 5, 2001.

On August 9, 2006 the Office accepted appellant's May 14, 2001 claim for left knee contusion. In a separate letter dated August 9, 2006, the Office informed appellant that the information submitted in support of her recurrence claim was insufficient to establish her claim and requested evidence that supported a worsening of her condition to the degree that she was disabled. By letter dated August 24, 2006, the Office again requested additional information, including a narrative medical report describing a worsening of appellant's employment-related condition, and a rationalized opinion explaining the causal relationship between her accepted work injury and her current condition.

Appellant submitted reports from Dr. O. Tom Johns, a treating physician. In "postop[erative] recheck" notes dated November 10, 2005, Dr. Johns diagnosed pain in the joint involving the left lower leg; sprain of the cruciate ligament of the left knee; and sprain of the left leg. His report reflected, "work status: off." On December 22, 2005 Dr. Johns stated that appellant had recently undergone a left lateral meniscus repair and needed to "go slow." In a March 16, 2006 report, he reiterated his earlier diagnoses. Noting that appellant had undergone anterior cruciate ligament reconstruction and lateral meniscus repair five months before, Dr. Johns opined that she could work without restrictions.

In a letter dated September 6, 2006, appellant stated her belief that her current discomfort was related to the 2001 work injury because she had never had any problems with her left knee prior to the April 5, 2001 fall. She indicated that there had been no change in her job duties since the original injury, and that she had sustained no new injuries since her last return to work. On September 7, 2006 the employing establishment controverted appellant's recurrence claim on the grounds that the medical evidence was insufficient.

Appellant submitted reports from Clayton Carroll, a physician's assistant. On September 14, 2005 Mr. Carroll diagnosed "knee pain versus meniscus pathology." Noting that appellant did not recall injuring herself, he related her complaint that the discomfort had been "going on and off for about two years." On examination, Mr. Carroll found tenderness with full flexion on the medial aspect of the left knee and tenderness to palpation on the medial compartment. X-rays showed bilateral medial compartment narrowing. On September 22, 2005 Mr. Carroll diagnosed sprain of the cruciate ligament of the left knee, sprain of the left leg and pain in the joint involving the left lower leg. He reported the results of a magnetic resonance imaging (MRI) scan, which revealed a tear of the anterior cruciate ligament with a bone bruise in the proximal tibia, as well as moderate joint effusion. On October 27, 2005 Mr. Carroll stated that appellant's range of motion was limited, noting that she had just undergone surgery.

By decision dated October 31, 2006, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence was insufficient to show that her current medical condition was due to the accepted work injury.

On November 19, 2006 appellant requested reconsideration of the October 31, 2006 decision. She submitted a September 11, 2006 report from Dr. Douglas B. Freels, a Board-certified orthopedic surgeon, who related the history of injury, as described by appellant. Dr. Freels stated that appellant had developed progressive instability symptoms and pain in her left knee since she fell down stairs at work in April 2001. He reported that appellant had what "sounds like an ACL [anterior cruciate ligament] reconstruction." Dr. Freels examination of the left knee revealed full range of motion with some crepitation. No instability was noted. X-rays showed some medial and lateral compartment narrowing, with mild patello femoral arthritic spurs. Noting that appellant was "quite obese," Dr. Freels stated that her condition could be a late result of her fall and some early arthritic development, but that "it could also be from other confounding factors such as her weight." He stated that "it could be that she developed traumatic injury from all the episodes of instability prior to [her] surgery and that could therefore be related to the work injury. However, Dr. Freels indicated that it was difficult for him to say that her condition was due to the April 2001 job injury. He opined that appellant was capable of working in a "sit-down" job.

By decision dated February 23, 2007, the Office denied modification of its October 31, 2006 decision, finding that the medical evidence did not establish that she sustained a recurrence of disability causally related to the April 5, 2001 work injury. The Office found that Dr. Freels' report was speculative and unrationalized.

On September 19, 2007 appellant again requested reconsideration. In support of her request, she submitted several unsigned documents, including a diagnosis sheet from Longie Chiropractic dated August 1, 2007, a schedule of chiropractic visits for the period March 2 through September 18, 2007 and a consultation history dated August 1, 2007.

By decision dated October 2, 2007, the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted did not warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of the Office's regulations defines "recurrence of disability" as an 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.[1] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[2]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she 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.[3] This burden includes the necessity of furnishing evidence from a qualified 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.[4] Moreover, the physician's conclusion must be supported by sound medical reasoning.[5]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[6] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[7] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[8]

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[1] 20 C.F.R. § 10.5(x) (2002). *See Carlos A. Marrero*, 50 ECAB 117 (1998).

[2] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[3] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[4] Section 10.104(b)(2) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. 20 C.F.R. § 10.104(b)(2) (2003).

[5] *See* 20 C.F.R. § 10.104(b)(1) (2003). *See also Robert H. St. Onge*, *supra* note 3.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[7] For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 3; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

Appellant has the burden of establishing that she sustained a recurrence of a medical condition[9] that is causally related to her accepted employment injury. To meet her burden, she must furnish 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 sound medical rationale.[10] Where no such rationale is present, the medical evidence is of diminished probative value.[11]

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.[12]

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.[13]

ANALYSIS -- ISSUE 1

Appellant has not met her burden of proving that she sustained a recurrence of disability or recurrence of a medical condition subsequent to September 14, 2005. The Office accepted her May 14, 2001 traumatic injury claim for left knee contusion. In her July 18, 2006 recurrence claim, appellant alleged that she experienced pain, discomfort and limited mobility over the years, which progressed to the point that she required medical attention on September 14, 2005, and was forced to stop work on October 18, 2005. However, she has failed to produce any rationalized medical opinion evidence establishing that she was disabled or required further medical treatment for a continuing employment-related condition.

To establish her claim of recurrence of disability, appellant must show that she was rendered unable to work due to a spontaneous change in her medical condition, which was

[9] "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

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

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

[12] 20 C.F.R. § 10.5(y).

[13] 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. *Id*. at Chapter 2.1500.5(a).

causally related to her accepted injury, without an intervening injury or new exposure to the work environment that caused the illness.[14] However, appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled during any period subsequent to September 14, 2005, due to residuals of her accepted injury.

Reports from Dr. Johns for the period November 10, 2005 through March 16, 2006 reflect that appellant underwent anterior cruciate ligament reconstruction and lateral meniscus repair in late 2005. Notes dated November 10, 2005 contained diagnoses of pain in the joint involving the left lower leg; sprain of the cruciate ligament of the left knee; and sprain of the left leg, and reflected, "work status: off." However, none of his reports contained an opinion as to the cause of appellant's current condition, or explained the relationship between her need for surgery and her accepted left knee contusion. 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 on the issue of causal relationship.[15] Therefore, Dr. Johns' reports are insufficient to establish appellant's claim for recurrence of disability.

Appellant submitted reports from Mr. Carroll, a physician's assistant, reflecting that she had undergone surgery in late 2005 for a tear in her left anterior cruciate ligament. The Board has found a physician's assistant is not a physician as defined under the Act. Therefore, Mr. Carroll is not competent to provide medical evidence and his reports lack probative value.[16]

Dr. Freels' September 11, 2006 report also fails to establish a recurrence of disability. Although he indicated that appellant was currently able to work in a "sit down" job, he did not address the relevant issue of total disability for work during the period in question. Therefore, Dr. Freels' report is irrelevant to the issue of disability. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.[17]

[14] 20 C.F.R. § 10.5(x) (2002). *See Carlos A. Marrero*, *supra* note 1.

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

[16] 5 U.S.C. § 8101(2); *see Ricky S. Storms*, 52 ECAB 349 (2001). Section 8101(2) of the Act provides in pertinent part: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[17] *Amelia S. Jefferson*, 57 ECAB __ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, *supra* note 2.

Appellant has provided no rationalized opinion evidence establishing that she was disabled subsequent to September 14, 2005. As she has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

The Board also finds that appellant has failed to establish a recurrence of her accepted medical condition. The record reflects that appellant was originally treated for her accepted condition by employing establishment physicians on April 5 and 20, 2001. There is no evidence of record establishing that appellant received medical treatment for her accepted condition between April 20 and September 14, 2005, when she was examined by a physician's assistant. As computed from the date of the last examination on April 20, 2001, the treatment on September 14, 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 containing a description of the objective findings and supporting causal relationship between her current condition and the previously accepted work injury.[18] She had the burden of submitting sufficient medical evidence to document the need for further medical treatment.[19] Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.[20]

Dr. Johns diagnosed pain in the joint involving the left lower leg; sprain of the cruciate ligament of the left knee; and sprain of the left leg. However, as noted above, he did not offer an opinion as to the cause of appellant's condition. Therefore, his report is of diminished probative value in establishing a recurrence of the accepted medical condition.

Dr. Freels' report is also insufficient to establish appellant's claim, as it does not contain a reasoned opinion supporting a causal relationship between appellant's current condition and the previously accepted work injury, as required by Office procedures.[21] Dr. Freels stated that appellant had developed progressive instability symptoms and pain in her left knee since she fell down stairs at work in April 2001, and reported that she had what "sounds like an ACL reconstruction." Noting that appellant was "quite obese," he stated that appellant's condition could be a late result of her fall and some early arthritic development, but that "it could also be from other confounding factors such as her weight." Dr. Freels stated that "it could be that she developed traumatic injury from all the episodes of instability prior to [her] surgery and that could therefore be related to the work injury. However, he indicated that it was difficult for him to say that her condition was due to the April 2001 job injury. Dr. Freels' suggestion that appellant's condition might be related to her 2001 injury is speculative and equivocal. Moreover, he has provided no evidence of bridging symptoms linking appellant's anterior cruciate ligament tear and other current symptoms to her accepted left knee contusion. Therefore, the report is of limited probative value.

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

[19] 20 C.F.R. § 10.5(y).

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

[21] *Id.*

The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a disability or recurrence of a medical condition, and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[22] the Office regulations provide that the evidence or argument submitted by 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.[23] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[24] 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 on the merits.[25] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[26]

ANALYSIS -- ISSUE 2

Appellant's September 19, 2007 request for reconsideration 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).

In support of her request for reconsideration, appellant submitted several unsigned documents, including a diagnosis sheet from Longie Chiropractic dated August 1, 2007, a schedule of chiropractic visits for the period March 2 through September 18, 2007 and an August 1, 2007 consultation history. The documents do not address the relevant issues in this case, namely whether appellant's accepted employment injury caused disability during the period in question and whether her current medical condition is causally related to the April 5, 2001 work injury. The Board finds that these documents do not constitute relevant and pertinent new evidence not previously considered by the Office.[27] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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[22] 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).

[23] 20 C.F.R. § 10.606(b)(2).

[24] 20 C.F.R. § 10.607(a).

[25] 20 C.F.R. § 10.608(b).

[26] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[27] *See Susan A. Filkins*, 57 ECAB 630 (2006).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 14, 2007 request for reconsideration .

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability or medical condition that was causally related to her accepted injury. The Board also finds that 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).

ORDER

IT IS HEREBY ORDERED THAT the October 2 and February 23, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 16, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board