United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 10-592**
	)	**Issued: October 7, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Colorado Springs, CO, 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 December 30, 2009 appellant filed a timely appeal of an August 25, 2009 Office of Workers' Compensation Programs' merit decision denying a recurrence claim and a September 18, 2009 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merit and nonmerit issues of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on March 4, 2009; and (2) whether the Office properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 15, 2001 appellant, then a 45-year-old clerk, filed an occupational disease claim alleging that he injured his back lifting a tray of mail. He first realized his condition in October 2000 and related it to his employment in February 2001. Appellant stated that on December 5, 1999 he had surgery to repair a perforated disc. He returned to light-duty work until September 2000 when he began working full time, three hours in automation and five hours

manual operation. Appellant experienced back discomfort lifting a tray in October 2000 and also when preventing a tray from falling. He used leave under the Family Medical Leave Act, and in February 2001 while at work, he developed increased pain with numbness and tingling in the right leg. A magnetic resonance imaging (MRI) scan revealed a herniated disc. On January 17, 2002 the Office accepted appellant's claim for aggravation of preexisting herniated nucleus pulposus at L4-5. Appellant returned to his date-of-injury limited-duty work on April 16, 2002. The Office denied his claim for a schedule award a December 17, 2002 decision.

Appellant filed a recurrence of disability claim on May 18, 2009 alleging that on February 27, 2009 he sustained a recurrence of his medical condition due to his May 15, 2001 employment injury. He first sought medical treatment on March 4, 2009. Appellant stated that his upper back and lower right hip began bothering him in February 2009. In a letter dated May 28, 2009, the Office requested additional factual and medical evidence in support of appellant's claim. Appellant submitted a note dated June 8, 2009 from Kelly McMahan, a physician's assistant.

By decision dated August 25, 2009, the Office denied appellant's claim for recurrence of a medical condition on March 4, 2009. It found that appellant did not submit sufficient medical evidence to establish his claim.

Appellant requested reconsideration on September 8, 2009 by indicating with a checkmark on the appeals right form that he wished reconsideration.

In a decision dated September 18, 2009, the Office denied appellant's request for reconsideration.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[1] When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing March 4, 2009 and his May 15, 2001 employment

[1] 20 C.F.R. § 10.5(x).

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

injury.[3] 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 disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[4]

ANALYSIS -- ISSUE 1

On May 18, 2009 appellant filed a claim for recurrence of his medical condition due to his May 15, 2001 employment injury. He sought medical treatment on March 4, 2009. The Office requested that appellant provide medical evidence in support of his claim in a letter dated May 28, 2009. In response to the Office's request for medical evidence, he submitted a June 8, 2009 report from Ms. McMahan, a physician's assistant. The report of a physician's assistant are of no probative value as a physician's assistant is not a "physician" as defined by section 8101(2) of Federal Employees' Compensation Act.[5] As this is the only evidence appellant submitted it is not sufficient to establish that his need for medical treatment on March 4, 2009 was due to his accepted lumbar condition. The Board finds that the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

The Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.[6] Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office.[7] Section 10.608 of the Office's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.[8]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's August 25, 2009 decision denying his claim for recurrence on September 8, 2009. He did not provide a written statement or include any evidence in support of this request. Appellant merely indicated with a checkmark that he wished reconsideration. He did not comply with the requirements of section 10.606(b) of the Office's regulations by setting forth arguments or evidence and showing that the Office

[3] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[4] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[5] *J.M.*, 58 ECAB 448 (2007); *Merton J. Sills*, 39 ECAB 572 (1988).

[6] 5 U.S.C. §§ 8101-8193, 8128(a).

[7] 20 C.F.R. § 10.606.

[8] *Id.* at § 10.608.

erroneously applied or interpreted a specific point of law; or advancing a relevant legal argument not previously considered by the Office; or constituting relevant and pertinent new evidence not previously considered by the Office.[9] The Board finds that the Office properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant failed to submit any medical evidence in support of his claim for recurrence and therefore failed to meet his burden of proof. The Board further finds that he did not submit any evidence or argument in support of his request for reconsideration and that the Office properly denied this request.

ORDER

IT IS HEREBY ORDERED THAT the September 18 and August 25, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2010
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

[9] *Id*. at § 10.606.