United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 10-59**
	)	**Issued: September 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Parsipanny, NJ, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 7, 2009 appellant filed a timely appeal from an October 8, 2008 decision of the Office of Workers' Compensation Programs that denied her claim and a July 15, 2009 decision that 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 met her burden of proof to establish that a rupture of the ulnar collateral ligament was caused by the September 27, 2007 employment injury; (2) whether the Office properly denied authorization for surgical repair of the ruptured ulnar collateral ligament; (3) whether appellant established that she sustained a recurrence of disability on March 18, 2008; and (4) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant, through her attorney, asserts that she sustained a recurrence of total disability on March 18, 2008, that the accepted conditions should be expanded, the requested surgery should be authorized and that the Office erred in denying merit review.

FACTUAL HISTORY

On September 26, 2007 appellant, then a 44-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that she injured her right hand when she was hit by a hand truck. A modified position description, accepted by her on October 25, 2007, indicated that her duties were to answer the telephone and perform clerical duties with her left hand. The Office accepted that appellant sustained a contusion of the right thumb. A December 10, 2007 magnetic resonance imaging (MRI) scan of the right thumb demonstrated no obvious tendon or ligament abnormality and a December 11, 2z007 MRI scan of the right hand was normal with no fracture, arthritis, effusion or instability identified. Ligaments were normal without evidence of laxity or tear and normal tendons without evidence of tendinitis or tear. On March 11, 2008 Dr. Gabriel L. Dassa, a Board-certified osteopath specializing in orthopedic surgery,[1] advised that appellant had very mild tenderness at the interphalangeal (IP) joint of the right thumb with no tenderness at the metacarpophalangeal (MCP) joint. He diagnosed resolving sprain/strain of the IP and MCP joints.

Appellant stopped work on March 18, 2008 and on March 29, 2008 filed a Form CA-2a recurrence claim. The employing establishment noted that she had been provided limited duty since the September 26, 2007 injury. Work hours were from 7:30 a.m. to 4:00 p.m. with no use of the right hand. Appellant was allowed time off three to four times a week to attend physical therapy, that her regular work hours were from 7:30 a.m. to 4:00 p.m., with rotating days. The Office informed her of the type of evidence needed to support her recurrence claim and she submitted a March 18, 2008 report in which Dr. Dassa reported that appellant had increased right thumb pain secondary to sprain/strain since working nights. Right thumb examination showed tenderness over the IP joint, increased range of motion with pain, very mild swelling and intact sensation and motor. Dr. Dassa diagnosed exacerbation of right thumb IP joint sprain/strain and advised that she was totally disabled. On April 1, 2008 he advised that appellant's physical examination was unchanged and that she continued to be totally disabled. On April 17, 2008 Dr. Martin A. Posner, Board-certified in orthopedic and hand surgery, advised that she was disabled until further notice.

By decision dated May 1, 2008, the Office denied appellant's claim that she sustained a recurrence of disability on March 18, 2008 on the grounds that the medical evidence did not support that she could not perform her light-duty position.[2]

On May 9, 2008 appellant requested reconsideration and submitted an April 28, 2008 report in which Dr. Posner noted a history that a hand truck fell on her right hand on September 26, 2007, injuring her light finger and thumb. Dr. Posner noted that she had worsening, persistent pain in the thumb with examination findings of enlargement on the ulnar side of the MCP joint, with marked tenderness over the collateral ligament and marked instability when the joint was stressed radially. He advised that appellant sustained a complete rupture of the ulnar collateral ligament involving the MCP joint of the right thumb and requested authorization for reconstructive surgery. In a May 29, 2008 letter, the Office informed

[1] Dr. Dassa is also recognized as Board-certified by the American Board of Medical Specialists.

[2] The Office also authorized appellant to change physicians to Dr. Posner.

Dr. Posner that surgery was not authorized because there was no basis to expand the accepted condition, as there was no evidence of tendon or ligament involvement found on the attached December 2007 MRI scan. By letter dated June 9, 2008, Dr. Posner noted that appellant's right thumb condition was worsening and again requested authorization for surgery.

In a July 15, 2008 decision, the Office denied appellant's request to expand the accepted condition and her request for surgery on the grounds that the medical evidence did not support that her current thumb condition was causally related to the September 26, 2007 employment injury. It noted that Dr. Posner did not address the December 12, 2007 MRI scan. In reports dated May 19 and July 13, 2008, Dr. Posner advised that appellant's condition had not changed and again requested authorization for surgery. In a merit decision dated October 8, 2008, the Office denied modification of the May 1, 2008 decision on the grounds that the medical evidence was insufficient to establish her recurrence claim. It noted that it reviewed Dr. Posner's April 28, 2008 report but that the medical evidence was void of an explanation as to why appellant could not perform her light-duty assignment or how her current condition was related to the September 26, 2007 employment injury, in light of the December 10, 2007 MRI scan.

On April 21, 2009 appellant, through her attorney, requested reconsideration and resubmitted Dr. Posner's April 28, May 19, June 9 and July 13, 2008 reports. The attorney argued that the medical evidence established that the rupture of the ulnar collateral ligament was caused by the September 26, 2007 employment injury and that she sustained a recurrence of disability. In a nonmerit decision dated July 15, 2009, the Office denied appellant's reconsideration request of the May 1, July 15 and October 8, 2008 decisions. It found that appellant submitted no relevant argument and that the medical evidence submitted was duplicative.

LEGAL PRECEDENT -- ISSUE 1

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[3] 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.[4] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[5]

[3] *D.G.*, 59 ECAB ____ (Docket No. 08-1139, issued September 24, 2008).

[4] *Id.*

[5] *Roy L. Humphrey*, 57 ECAB 238 (2005).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that the complete rupture of the ulnar collateral ligament was caused by the September 26, 2007 employment injury. Appellant injured her right thumb on September 26, 2007 when she was hit by a hand truck and the Office accepted a right thumb contusion. A December 10, 2007 MRI scan of the right thumb demonstrated no obvious tendon or ligament abnormality. Likewise, a December 11, 2007 MRI scan of the right hand was normal with no fracture, arthritis, effusion or instability identified, normal ligaments without evidence of laxity or tear and normal tendons without evidence of tendinitis or tear.

While Dr. Posner was consistent in his opinion that, the ulnar collateral ligament rupture was caused by the September 26, 2007 employment injury, he did not discuss the December 2007 MRI scan findings in any of his reports or provide any explanation regarding how he reached his conclusion. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted employment injury resulted in a diagnosed condition is not sufficient to meet the claimant's burden of proof.[6] Dr. Posner merely concluded that the ulnar collateral ligament rupture was caused by the September 26, 2007 employment injury. He included no explanation or supportive rationale. Dr. Posner opinion therefore has insufficient rationale to establish that the ligament rupture was employment related.[7]

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Federal Employees' Compensation Act[8] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[9] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[10]

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.[11] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken

[6] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[7] *Conard Hightower*, 54 ECAB 796 (2003).

[8] 5 U.S.C. §§ 8101-8193.

[9] *Id*. at § 8103; *see L.D.*, 59 ECAB ____ (Docket No. 08-966, issued July 17, 2008).

[10] *Kennett O. Collins, Jr*. 55 ECAB 648 (2004).

[11] *See D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[12] To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[13] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[14]

ANALYSIS -- ISSUE 2

Although the surgery may have been medically warranted, in order for a surgical procedure to be authorized, a claimant must also show that the surgery is for a condition causally related to an employment injury.[15] Because appellant did not submit a reasoned medical opinion explaining that the ulnar collateral ligament tear was caused by employment factors,[16] the Office properly acted within its discretionary authority to deny authorization for the requested surgery.[17]

LEGAL PRECEDENT -- ISSUE 3

Section 10.5(x) of the Office's regulations provide that 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.[18] This term also means an inability to work 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, except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[19]

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 establishes that, light duty can be performed, the employee has the burden to establish by the

[12] *Minnie B. Lewis*, 53 ECAB 606 (2002).

[13] *M.B.*, 58 ECAB 588 (2007).

[14] *R.C.*, 58 ECAB 238 (2006).

[15] 5 U.S.C. § 8103; *R.C., id.*

[16] *T.F.*, 58 ECAB 128 (2006).

[17] *L.D., supra* note 9.

[18] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[19] *Id.*

weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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.[20]

ANALYSIS -- ISSUE 3

There is no evidence in this case to support that appellant's light-duty assignment changed. The Board also finds that the medical evidence of record is insufficient to establish that she sustained a recurrence of disability on March 18, 2008 due to the September 26, 2007 employment injury. Appellant submitted reports from Dr. Dassa, an attending physician, dated March 11 to April 1, 2008. While Dr. Dassa provided examination findings of right thumb pain, swelling and tenderness and noted her complaint that she had increased right thumb pain secondary to sprain/strain since working nights and diagnosed exacerbation of right thumb IP joint sprain, he did not explain how or why the condition had worsened as a result of her accepted injury. Moreover, the record indicates that appellant already worked under restrictions from 7:30 a.m. to 4:30 p.m. allowing no use of her right hand. Dr. Dassa exhibited no knowledge of the duties of her modified assignment and did not provide a rationalized opinion as to why she was totally disabled from this position. His reports are of diminished probative value and fail to establish appellant's claimed recurrence on March 18, 2008.[21] Likewise, although Dr. Posner advised that she was totally disabled, he too demonstrated no knowledge of her light-duty job and did not provide any explanation as to why she could not perform the left-hand-only sedentary duties of her modified position.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.[22] The record in this case does not contain a medical report providing a reasoned medical opinion that her claimed recurrence of disability on March 18, 2008 was caused by the accepted right thumb contusion.[23]

LEGAL PRECEDENT -- ISSUE 4

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[24] 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).[25] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the

[20] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[21] *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

[22] *Beverly A. Spencer*, *supra* note 6.

[23] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[24] 5 U.S.C. § 8128(a).

[25] 20 C.F.R. § 10.608(a).

Office erroneously applied or interpreted a specific point of law; (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.[26] 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 on the merits.[27]

ANALYSIS -- ISSUE 4

With the April 21, 2009 request for reconsideration, appellant's attorney argued that the Office should have accepted all conditions that resulted from the September 26, 2007 employment injury and that appellant sustained a recurrence of total disability on March 18, 2008. Appellant did not show that the Office erroneously applied or interpreted a specific point of law and argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[28] Consequently, she was 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).[29]

With respect to the third above-noted requirement under section 10.606(b)(2), the reports from Dr. Posner appellant submitted with the April 21, 2009 reconsideration request were previously of record. While the Office had not specifically addressed the May 19 and July 13, 2008 reports in its previous decisions, in those reports he merely reiterated his conclusion that her right thumb condition had worsened and again requested surgery. 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.[30] As Dr. Posner had discussed his opinion in his April 28, 2008 report that was fully reviewed by the Office in its October 8, 2008 decision, appellant did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied her reconsideration request.[31]

CONCLUSION

The Board finds that appellant did not establish that the rupture of the ulnar collateral ligament was caused by the September 27, 2007 employment injury nor that the Office abused its discretion in denying surgery to repair that condition. The Board further finds that she did not establish that she sustained a recurrence of total disability on March 18, 2008 and that the Office properly refused to reopen her claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[26] *Id*. at § 10.608(b)(1) and (2).

[27] *Id*. at § 10.608(b).

[28] *M.E.*, 58 ECAB 694 (2007).

[29] 20 C.F.R. § 10.606(b)(2).

[30] *D'Wayne Avila*, 57 ECAB 642 (2006).

[31] *See Johnnie B. Causey*, 57 ECAB 359 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 15, 2009 and October 8, 2008 are affirmed.

Issued: September 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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