

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRISTINA A. BAQUIAN and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, Wash.

*Docket No. 97-2766; Submitted on the Record;
Issued July 13, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability commencing April 10, 1996, causally related to her accepted January 27, 1993 right shoulder tendinitis; and (2) whether the Office of Workers' Compensation Programs, by its May 2, 1997 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that she sustained a recurrence of disability commencing April 10, 1996, causally related to her accepted January 27, 1993 right shoulder tendinitis; and in its May 2, 1997 decision, the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Appellant filed a claim on April 27, 1993 alleging that commencing January 27, 1993 while performing her duties as a distribution clerk, she sustained right shoulder tendinitis from "sorting mail up and down overhead continuously." The employing establishment stated that appellant stopped work on April 27, 1993 at 7:00 p.m. and returned to work on May 3, 1997 at 5:00 p.m. Appellant was on light duty and then returned to regular duty. The Office accepted appellant's claim for right shoulder tendinitis on August 26, 1993.

On April 10, 1996 appellant filed a notice of recurrence of disability (Form CA-2a), alleging that commencing that day she sustained a recurrence of disability causally related to her accepted January 27, 1993 right shoulder tendinitis. The employing establishment indicated that appellant did not stop work. By decision dated August 19, 1996, the Office denied appellant's claim. The Office found that the evidence of record failed to demonstrate that the claimed recurrence of disability on or after April 10, 1996 is causally related to appellant's accepted January 27, 1993 right shoulder tendinitis. By letter dated January 26, 1997, appellant requested reconsideration of the August 19, 1996 decision. By decision dated May 2, 1997, the Office

denied appellant's request for reconsideration, finding that the evidence of record was insufficient to warrant review of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

An individual 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 compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.³

The medical evidence submitted in support of appellant's claim for recurrence of disability commencing April 10, 1996 consists of five duty status reports, Form CA-17, by Dr. Richard Arnold dated April 11, May 6, June 3, July 2 and August 5, 1996.

On the duty status report dated April 11, 1996 a history was given of a right shoulder injury in 1994. Dr. Arnold indicated by a check mark that the history corresponded with that given to him by appellant. He diagnosed supraspinatus tendinitis and indicated that appellant was advised that she could return to work on April 11, 1996 with restrictions. On the duty status report dated May 6, 1996 Dr. Arnold provided the same information as on the April 11, 1996 form. The duty status reports dated June 3, July 2 and August 5, 1996, did not include a history of injury, or a diagnosis. They all indicated that appellant was still restricted in lifting no more than 20 pounds. and limited in reaching above her shoulder. None of the duty status reports provided a rationalized medical opinion explaining how a claimed recurrence of disability commencing April 10, 1996 was causally related to appellant's accepted January 27, 1993 right shoulder tendinitis, or to provide bridging information between the two, especially since appellant returned to regular duty after returning to work from the original injury. By letter dated May 14, 1996, the Office advised appellant of the specific type of evidence needed to support her recurrence claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

¹ *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

² *David J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Louis G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993).

The Board also finds that in its decision dated May 2, 1997, the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration of his claim on the merits under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or a fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) provides that when 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.⁵

In her January 26, 1997 request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. In support of her reconsideration request, appellant submitted a November 4, 1996 letter from Dr. Arnold. He stated that “[appellant] has had chronic, recurrent problems in her right shoulder dating back to 1994.” Dr. Arnold went on to say that “[s]he had an exacerbation of this problem on April 11, 1996.” He further stated that “[o]ne can expect that she will probably have another exacerbation of this problem should she go back to her previous working environment where she had to lift heavy objects over her head.” In reports previously submitted, Dr. Arnold also related appellant's condition to a 1994 injury and restricted appellant's work requirements. He does not address the relevant issue of whether appellant's claimed recurrence of disability commencing April 11, 1996 was causally related to her accepted January 27, 1993 right shoulder tendinitis. Therefore, Dr. Arnold's November 4, 1996 report is both cumulative and irrelevant.

As appellant's January 26, 1997 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

⁴ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

⁵ 20 C.F.R. § 10.138(b)(2).

The decisions of the Office of Workers' Compensation Programs dated May 2, 1997 and August 19, 1996 are affirmed.⁶

Dated, Washington, D.C.
July 13, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Appellant's notice of appeal was postmarked August 18, 1997, therefore, the Board's jurisdiction properly extends to the Office's August 19, 1996 decision. 20 C.F.R. § 501.3(d)(2), 501.3(d)(ii); *Oel Noel Lovell*, 42 ECAB 537 (1991).