

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEXANDRA SEEDORF and U.S. POSTAL SERVICE,
POST OFFICE, Lake Havasu City, AZ

*Docket No. 00-1763; Submitted on the Record;
Issued April 30, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning July 19, 1999 due to her January 25, 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On January 25, 1995 appellant, then a 41-year-old postal clerk, filed a traumatic injury claim alleging that earlier that day she slipped in a pool of water and twisted her back while performing work duties. The claim was accepted for rhomboid, cervical and trapezius strains to the left shoulder and left shoulder impingement syndrome. Appellant stopped work on January 26, 1995 with intermittent periods of disability until April 29, 1998, when she returned to a permanent rehabilitation position as modified general clerk.¹

On August 16, 1999 appellant filed a notice of recurrence of disability alleging that on July 19, 1999 she was no longer able to work full time. She alleged that she experienced neck pain, causally related to the original work injury.

On October 6, 1999 the Office advised appellant that the evidence submitted in support of her recurrence claim was insufficient and afforded her 30 additional days in which to provide supportive evidence. She responded to the Office request and submitted additional evidence.

By decision dated January 14, 2000, the Office denied the claim on the grounds that appellant failed to establish that her disability from work on or after July 19, 1999 was causally related to the accepted work injury. On April 12, 2000 appellant requested reconsideration. By

¹ On April 4, 1998 Dr. Marc Zimmerman, a Board-certified orthopedic surgeon and appellant's attending physician, reviewed the proposed duties of the permanent rehabilitation position and found that they were in compliance with his work restrictions.

decision dated April 24, 2000, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was insufficient to warrant a merit review.

Initially, the Board finds that appellant has not established that she sustained a recurrence of disability beginning July 19, 1999 due to her January 25, 1995 employment injury.

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 the employee 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 to 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 job requirements.² As part of this burden, appellant must furnish rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of disability and an accepted employment injury.³ Causal relation and disability are medical issues that must be resolved by competent medical evidence.⁴

In this case, appellant returned to the modified position eight hours a day on April 29, 1998. She continued to work full time as a modified general clerk, a position determined to be commensurate with her physical work restrictions, which involved occasional walking and standing, fine manipulation and simple grasping. Appellant began working part time on July 19, 1999 because of neck pain.

In a medical note dated June 3, 1998, Dr. Zimmerman reported that appellant had been doing quite well until a week prior when she was asked to do a job which involved a great deal of overhead lifting. Appellant related to Dr. Zimmerman that she did not have any problems initially, but within 24 hours began having the same type of pain that she had with her initial injury. This evidence does not support appellant's recurrence claim because it does not address appellant's increase in disability beginning July 19, 1999.⁵ Further, there is no evidence in the record that appellant's light-duty job requirements included overhead lifting or otherwise changed after April 29, 1998.

On July 19, 1999 Dr. Zimmerman reported that appellant could not work full time due to increased problems with her neck and back and was therefore restricted to part-time work. Dr. Zimmerman failed, however, to provide an opinion on whether the change in the nature and extent of appellant's condition that disabled her for full-time work was causally related to the

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

³ *Armando Colon*, 41 ECAB 563 (1990).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁵ In a letter dated September 2, 1998, the Office advised appellant that, based on Dr. Zimmerman's June 3, 1998 report, the incident described therein constituted a new injury and that appellant should file a notice of traumatic injury claim through the employing establishment.

January 25, 1995 injury. Therefore, this report is insufficient to establish any increase of disability due to the work-related injury.

Appellant also submitted an attending physician's report dated July 20, 1999 from Dr. Zimmerman, which indicated that appellant could sit, stand or walk for no more than four hours and kneel or bend for no more than one hour due to chronic pain in her neck and shoulder. Dr. Zimmerman also noted in the form report that appellant's condition was caused by employment activity by placing a checkmark in the box marked "yes."

The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.⁶

As appellant has not submitted competent medical evidence showing that she suffered an increase in disability beginning July 19, 1999 due to her accepted January 25, 1995 employment injury, she has not met her burden of proof.

The Board further finds that the Office properly refused to reopen the claim for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁷ the Office's regulations provide in section 10.606(b)(2) of Title 20 of the Code of Federal Regulations that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

The Office properly determined that the evidence submitted on reconsideration was insufficient to warrant reopening of appellant's case. Appellant submitted a May 11, 1999 report from Dr. John Anson, a Board-certified neurologist, and a March 23, 2000 report from Dr. Zimmerman. Dr. Anson stated that appellant continued to have severe posterior neck pain radiating up to her head and down her shoulders and that her symptoms were clearly related to her work injury of January 1995. Dr. Zimmerman stated that appellant had apparently been seen by Dr. Anson on May 11, 1999, who felt that her cervical spine symptoms were related to a

⁶ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 20 C.F.R. § 10.606(b) (1999).

⁹ 20 C.F.R. § 10.608 (1999).

work-related injury dating back to 1995. He then stated that after having reviewed appellant's chart, he agreed with Dr. Anson.

Dr. Anson's May 11, 1999 report discussed appellant's symptoms at that time, prior to the alleged recurrence of disability on July 19, 1999 and is therefore immaterial. Dr. Zimmerman's March 23, 2000 report does not provide any new and relevant information regarding the alleged increase of disability. The report does not contain a rationalized medical opinion that appellant sustained a recurrence of disability on or after July 19, 1999 due to her January 25, 1995 employment injury.

Appellant's April 12, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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.

The April 24 and January 14, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 30, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member