

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE T. SAMPSON and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 99-1622; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability or required medical treatment on July 21, 1998 causally related to her March 6, 1989 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on February 2, 1999.

Appellant, a 46-year-old letter sorter machine clerk, filed a notice of traumatic injury, alleging that on March 6, 1989 she injured her back lifting mail in the performance of duty. The Office accepted appellant's claim for cervical and lumbar radiculopathy on November 2, 1989 and entered her on the periodic rolls.

By decision dated September 22, 1995, the Office terminated appellant's compensation finding that she had no objective evidence of continuing disability. By decision dated March 18, 1997, the Office vacated the September 22, 1995 termination decision and reentered appellant on the periodic rolls.

The employing establishment offered appellant a light-duty position on May 1, 1997. The Office informed appellant that the position was suitable and allowed her 30 days to accept the job. Appellant returned to work on July 14, 1997, was not required to work on July 15 and 16, 1997 and worked eight hours on July 17, 1997.

Appellant filed a notice of recurrence of disability on July 30, 1997 alleging that her symptoms of pain and muscle spasm had persisted since the 1989 work injury. By decision dated January 12, 1998, the Office denied appellant's claim for recurrence of disability.

By letter dated January 12, 1998, the Office informed appellant that she had 15 days to accept the offered position. In a decision dated March 5, 1998, the Office terminated appellant's compensation benefits finding that she refused a suitable work position.¹

By letter dated January 10, 1999, appellant requested reconsideration of the Office's January 12, 1998 decision denying her claim for recurrence of disability. In support of her request, appellant submitted legal arguments. By decision dated February 2, 1999, the Office declined to reopen appellant's claim for consideration of the merits.²

Appellant filed a second notice of recurrence of disability on August 31, 1998 alleging that she still suffered from muscle spasms in her back, neck, arms and legs. In a letter dated November 9, 1998, the Office requested additional factual and medical evidence in support of appellant's claim. By decision dated February 2, 1999, the Office denied appellant's claim finding that she failed to establish a change in the nature and extent of her condition.

The Board finds that appellant failed to meet her burden of proof in establishing a recurrence of disability or medical condition as of July 21, 1998 causally related to her accepted employment injury.

In this case, the Office terminated appellant's compensation benefits on March 5, 1998 as she refused an offer of suitable work. Therefore, she is not entitled to any compensation for disability resulting from her March 6, 1989 employment injury after March 5, 1998,³ but may receive medical expenses for treatment of the accepted condition.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her current medical condition commencing July 21, 1998 and her March 6, 1989 employment injury.⁵ 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 current condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁶

In support of her claim, appellant submitted a work-release note dated August 20, 1998 from Dr. Robert A. Adair, appellant's attending physician who is Board-certified in preventative medicine. Dr. Adair stated that appellant was under medical care from July 24 to August 22,

¹ As the Office issued this decision on March 5, 1998, more than one year prior to the date of appellant's appeal to the Board on April 30, 1999, the Board will not address this decision on appeal. 20 C.F.R. § 501.3(d)(2).

² Following the February 2, 1999 decision, appellant submitted additional evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

³ 5 U.S.C. § 8106(c)(2). *Stephen R. Lubin*, 43 ECAB 564 (1992).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.14.4.c(6)

⁵ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

1998 due to radiculopathy from a herniated disc in her cervical spine. This report is not sufficient to meet appellant's burden of proof as Dr. Adair did not provide a history of injury, physical findings or an opinion regarding the causal relationship between his diagnosis and appellant's accepted employment injury of radiculopathies of the cervical and lumbar spines.

In a form report dated September 21, 1998, Dr. Adair diagnosed lumbosacral derangement and cervical derangement. He indicated with a checkmark "yes" that these conditions were related to appellant's employment injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷

Dr. Adair completed a note indicating that appellant was capable of limited duty from July 21 to September 25, 1998. This note contradicts other reports indicating that appellant was under medical treatment from July 24 to August 22, 1998 and unable to work. Due to the conflicting evidence from appellant's attending physician, his reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted a series of notes from Dr. C. Edward Robins, a clinical psychologist. These notes mention appellant's employment injury and diagnose post-traumatic stress disorder. However, Dr. Robins does not provide an opinion on the causal relationship between this diagnosis and appellant's accepted employment injury and thus his reports are not sufficient to establish a consequential psychiatric injury as a result of appellant's lifting injury.

As appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between her current diagnoses and her accepted employment injury, the Office properly denied her claim for medical treatment for a herniated disc.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.⁸

Appellant argued that the Office's denial of her claim for recurrence was erroneous because it conflicted with the March 5, 1998 decision terminating her compensation. She alleged that the Office failed to follow its procedures in the development of her recurrence claim. Appellant also argued that she had met her burden of proof to establish a recurrence of disability

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁸ 5 U.S.C. §§ 10.609(a) and 10.606(b).

in accordance with the Office's procedures and that she had experienced a change in the nature and extent of her light-duty requirements as her work space was drafty.

Appellant's statements are not sufficient to require the Office to reopen her claim for consideration of the merits. Her legal arguments do not contain a reasonable color of validity. First, the Office informed appellant of the medical evidence necessary to establish her claim for a recurrence of disability in its September 30, 1997 letter. This letter specifically requested medical evidence explaining why appellant's condition had worsened and factual evidence describing any other reason for her work stoppage. In response to this request, the record contains a copy of a letter to the employing establishment in which appellant described the cold work environment and her uneasiness with walking home in the early morning hours. Appellant also submitted medical evidence in support of her alleged recurrence in conformance with the Office's request.

The Office properly adjudicated appellant's recurrence claim prior to determining that she refused to work once suitable work was provided. Although the Office issued the proposal to terminate appellant's compensation benefits on the same day as the denial of recurrence, there is nothing to support appellant's allegation of error.

In the January 12, 1998 decision, the Office found that the medical evidence submitted was insufficient to meet appellant's burden of proof in establishing a recurrence of disability. As the issue in appellant's claim is a medical one, whether she was totally disabled beginning July 17, 1997 due to her accepted employment injury, the relevant evidence to require the Office to reopen her claim would be medical evidence. As appellant is not a physician, her opinion that the medical evidence is sufficient to establish her claim is not relevant and thus not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

The February 2, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 23, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member