

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. ELDRIDGE and U.S. POSTAL SERVICE,
PHOENIX GENERAL MAIL FACILITY, Phoenix, AZ

*Docket No. 01-67; Submitted on the Record;
Issued November 14, 2001*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs, by its May 3, 1999 decision, properly denied appellant's request for reconsideration of its April 24, 1998 decision; (2) whether appellant has met his burden of proof in establishing that he had a recurrence of disability on August 28, 1998 that was causally related to his June 22, 1990 employment injury; and (3) whether the Office, by its May 21, 1999 decision, properly denied reconsideration of its December 29, 1998 decision.

On June 22, 1990 appellant, then a 43-year-old supervisor, was bending over his desk filling out paperwork when he was struck in the back by a hamper being towed by a tractor. He filed a claim for pain in the upper back between the shoulders, lower trunk and right kidney area as well as numbness in both legs and a swollen left knee. The Office accepted appellant's claims for cervical and thoracic sprains, cervical herniated nucleus pulposus and permanent aggravation of lumbosacral and thoracic spondylosis. Appellant did not stop working at that time but was placed on limited duty.

On June 5, 1991 appellant stopped working and subsequently filed a claim for a recurrence of disability. He returned to work on June 10, 1991. On October 15, 1992 appellant filed another claim for a recurrence of disability for the period July 30 through September 23, 1992. Appellant stopped work again on October 5, 1993. The Office began payment of temporary total disability compensation. He returned to work on December 13, 1993. In a February 14, 1994 decision, the Office found appellant had no loss of wage-earning capacity because he had returned to a position with a higher pay than the position he left.

On August 11, 1994 appellant filed a claim for a schedule award. In an April 15, 1995 decision, the Office issued a schedule award for a 17 percent permanent impairment of the right arm, 41 percent permanent impairment of the left arm and 13 percent permanent impairment of each leg. The Office indicated that the schedule award would be paid for the period January 24, 1995 through December 19, 1999.

Appellant stopped working on April 15, 1995 and filed claims for continuing disability. In a May 2, 1995 decision, the Office rejected appellant's claim for compensation after April 15, 1995 because the evidence of record failed to establish a basis of modification of the loss of wage-earning capacity decision issued on February 15, 1995.

In a March 5, 1997 letter, the employing establishment offered appellant a light-duty position, beginning March 8, 1997. Appellant reported to work but stopped working again on March 12, 1997 and filed a claim for recurrence of disability. In an April 24, 1998 decision, the Office rejected appellant's claim for a recurrence of disability on the grounds that the weight of the medical evidence established that appellant was not disabled from the light-duty position he held beginning March 8, 1997.

On September 2, 1998 appellant filed a claim for recurrence of disability for the period August 28 to September 2, 1998. Appellant indicated that, on August 28, 1998, he was walking through the employing establishment when he felt a numbness in his lower back and his legs became weak, almost causing him to fall. In a December 29, 1998 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence submitted failed to support his claim that his recurrence of disability was causally related to the June 22, 1990 employment injury.

In a January 15, 1999 letter, appellant's representative requested reconsideration of the April 24, 1998 decision. The representative contended that the statement of accepted facts prepared by the Office was inaccurate because it did not convey the severity of the blow caused by the towed hamper. He further argued that the medical reports of a referral physician and the impartial medical specialist had reduced probative value because the reports were based on the allegedly inaccurate statement of accepted facts. He also claimed that the physicians in question did not have a description of the light-duty position appellant assumed on March 8, 1997 and, therefore, could not determine whether appellant could perform the duties of the position.

In a May 3, 1999 decision, the Office denied appellant's request for reconsideration of the April 24, 1998 decision on the grounds that the evidence submitted in support of the request was irrelevant and immaterial and, therefore, insufficient to require review of the prior decision.

In an April 16, 1999 letter, appellant's representative requested reconsideration of the Office's December 29, 1998 decision. In a May 21, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative and, therefore, insufficient to warrant review of the prior decision.

The Board finds that the Office, by its May 3, 1999 decision, improperly denied appellant's request for reconsideration of the April 24, 1998 decision.

The Office's procedures state that if a reconsideration decision is delayed beyond 90 days and the delay would jeopardize a claimant's ability to seek a merit review of his claim before the Board, the Office should conduct a merit review and issue a decision so as to protect appellant's right to appeal.¹ In this case, appellant filed his request for reconsideration of the April 24, 1998

¹ Federal (FECA) Procedure Manual, Part 2, Claims -- *Reconsiderations*, Chapter 1602.7 (January 1992).

decision on January 15, 1999. The Office delayed issuing its decision on appellant's request beyond 90 days. In issuing a decision denying the request for reconsideration on May 3, 1999, the Office denied appellant an opportunity to seek a merit review by the Board of its April 24, 1998 decision. Under its procedures, the Office was required to issue a merit decision so as to protect appellant's appeal rights. The case must, therefore, be returned to the Office for a merit review of the Office's April 24, 1998 decision, to be followed by an appropriate merit decision.

The Board further finds that the Office properly denied appellant's claim for a recurrence of disability for the period August 28 through September 2, 1998.

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 the employment injury and supports that conclusion with sound medical reasoning.²

In support of appellant's claim for a recurrence of disability, Dr. Joseph S. Ross, an osteopath, stated that appellant continued to suffer from multiple medical conditions which greatly limited his capacity to perform certain levels of work. He diagnosed cervical radiculitis, chronic lower back pain, degenerative joint disease, diabetes mellitus and peripheral neuropathy. Dr. Ross indicated that, as a consequence, appellant demonstrated weakness in the legs and an inability to stand for extended periods. He concluded that appellant was limited to sedentary work only. Dr. Ross stated that it was unlikely that appellant's condition would improve.

Appellant also submitted two reports from Dr. David A. Suber, a Board-certified neurologist. In a July 8, 1997 report, Dr. Suber diagnosed cervical radiculitis, chronic low back pain with lumbar strain and degenerative joint disease. He commented that there was an obvious relationship between appellant's employment injury and his medical conditions as appellant had difficulty with mobility due to the low back pain. In an October 29, 1997 note, Dr. Suber stated that appellant should no longer work because his employment exacerbated the painful symptoms of his conditions.

Appellant also submitted an October 5, 1998 report from Dr. Mari N. Schenk, a Board-certified radiologist, who stated that a lumbar magnetic resonance imaging (MRI) scan showed degenerative changes at T12-L1, L4-5 and L5-S1 with small, left-sided, peripheral annular fissures at L4-5 and L5-S1. No focal disc herniation was seen. The MRI scan also showed facet arthrosis at L4-5 on the right and bilaterally at L5-S1.

The medical evidence submitted by appellant did not specifically address whether appellant's recurrence of disability from August 28 through September 2, 1998 was causally related to the June 22, 1990 employment injury. Appellant stated that he had a sudden numbness in the back as he was walking on August 28, 1998. None of the medical reports of record directly addressed whether the sudden numbness appellant experienced was causally related to

² *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

the effects of the employment injury. The reports did not provide any physiological explanation on how the employment injury would result in a recurrence of disability eight years later.

The Board, however, finds that the Office, by its May 21, 1999 decision, improperly denied appellant's request for reconsideration of the December 29, 1998 decision.

Section 8128(a) of the Federal Employees' Compensation 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. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a relevant legal argument not previously considered by the Office, or submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an 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.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

In the request for reconsideration, appellant submitted a March 26, 1999 report from Dr. Suber, which directly addressed appellant's claim for a recurrence of disability as of August 28, 1998. He stated that he examined appellant on August 31, 1998 and found that he had a reflex asymmetry with associated weakness. Dr. Suber stated appellant's instability of gait was related to his low back pain and employment injuries, coupled with his degenerative joint disease and discogenic disease. He, therefore, presented a relevant report, which directly related appellant's recurrence of disability on August 28, 1998 to the employment injury. The Office, therefore, should have conducted a merit review of appellant's request for reconsideration.

³ 20 C.F.R. 10.608(b).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs, dated May 21 and 3, 1999, are hereby reversed and the case remanded for merit review of appellant's requests for reconsideration. The decision of the Office, dated December 29, 1998, is hereby affirmed.

Dated, Washington, DC
November 14, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member