United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 09-1158**
	)	**Issued: June 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Flushing, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Oral Argument May 20, 2010

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2009 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs' dated July 16, 2008 and January 29, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant sustained a recurrence of her accepted right shoulder condition; and (2) whether the Office properly refused to reopen her case for reconsideration under 5 U.S.C. § 8128.

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

This is the second appeal before the Board. Appellant's occupational disease claim, File No. xxxxxx964, was accepted for a left inguinal hernia by aggravation. She stopped work on May 27, 2002 and returned to full duty on October 1, 2002. On October 8, 2003 appellant filed a claim, File No. xxxxxx862, that was accepted for a right groin sprain and a recurrence of disability commencing October 22 to November 3, 2003. On September 16, 2004 appellant filed a Form CA-2a claim for a recurrence of disability beginning September 11, 2004. The Office accepted this claim, File No. xxxxxx398, for right abdominal strain. It subsequently accepted two additional claims for right groin sprain and for resolved right-sided abdominal strain. The claims were subsequently consolidated.

In a September 23, 2004 report, Dr. Lawrence E. Miller, an osteopath, stated that appellant was capable of working full time, for eight hours per day. He outlined restrictions of no lifting, pulling or pushing exceeding 15 pounds, on a nonrepetitive basis.

On November 27, 2004 appellant accepted a modified job as a mail handler for eight hours a day. The job involved pulling mail on conveyor belts, preparing meter mail on carts and hand canceling mail. It required standing from four to six hours and sitting for two to four hours. Appellant returned to work as a modified mail handler for six hours on Friday, November 27, 2004. However, on December 15, 2004 she filed a Form CA-2a claim for recurrence of disability as of November 29, 2004 which indicated that she returned to work for only one day. On the form, appellant stated that she attempted to return to work as a modified mail handler but was unable to perform her duties due to pain and discomfort caused by her accepted left abdominal condition. The employing establishment indicated that she worked on a conveyor belt with a foot cushion rug. Appellant's job required no lifting or pushing and that she was given a safety chair, in accordance with her limitations. The employing establishment stated that her work entailed simple hand grasping, placing mail in a tray or hamper weighing two to six ounces. It asserted that it had provided appellant with the lightest work it had available.

In reports dated November 30 and December 3, 2004, Dr. Jorge Orellana, Board-certified in family medicine, stated that appellant was unable to perform her work duties from November 30 to December 6, 2004 due to left-sided abdominal pain.

Appellant submitted a statement in support of her claim. She noted that her limited-duty assignment required her to prepare magazines on a belt, cull magazines from the belt, and then turn around and lift the magazines from the belt to a cart placed four feet to her rear. Appellant asserted that this action resulted in a turning, twisting motion, a repetitive action occurring about 20 times per minute, which she performed continuously for an eight-hour shift. She alleged that, after about 20 minutes, she felt a sharp pain in her groin area and around the right side of her abdomen.

A statement of accepted facts dated July 3, 2006 indicates that appellant filed an additional claim for a recurrence on February 20, 2005.

In an April 14, 2005 report, Dr. Orellana noted that he had examined appellant on December 3, 2004, January 20 and March 11, 2005 for dull abdominal pain which rated 4 to 5 on

a scale of 1 to 10. The pain radiated to the right inguinal area. Dr. Orellana diagnosed chronic abdominal wall muscle pain and opined that appellant was able to work full time with restrictions on lifting, pulling or pushing more than 10 pounds, on a nonrepetitive basis only.

The employing establishment submitted a May 2, 2005 statement which controverted appellant's description of her work duties. It stated:

> "In regards to the statement given by [appellant], her statement is not completely accurate. When prepping flats she was working off a conveyor belt which was loaded by someone else and the bundles she was prepping were less than 5 to 10 pounds. No bending was needed since the belt is waist high. The process of prepping flats consisted of cutting the plastic straps or wrapping on the bundle and placing the bundle into an Ergo cart. To place the bundle into the Ergo cart the employee must turn around put the bundle in, not twisting since the Ergo cart is directly behind the employee. Although the employee works eight hours a day there are two breaks and a lunch.... The job offer was well within [appellant's] job limits of no bending, no twisting, no standing more than two hours, [and] no lifting more than 10 pounds. In addition, although the process of prepping flats is repetitive in nature it does not consist of continuous repetitive motion by the employee."

In a telephone memorandum dated May 16, 2005, the Office noted that appellant advised that she had been out of work since February 2005 and had submitted another Form CA-2a claiming a recurrence of disability on or about January 26, 2005.

In order to determine appellant's current condition and work capacity, the Office referred her to Dr. Robert Israel, a Board-certified orthopedic surgeon, for a second opinion examination. In a July 8, 2005 report, Dr. Israel diagnosed a resolved abdominal sprain. He stated:

> "Based on my examination and an orthopedic point of view, [appellant] has no causally[-]related disability as a result of the accident of record. The claimant can work and return to her date[-]of[-]injury job and resume her [daily] pre-accident activities ... without restrictions. Prognosis in this case is good.
>
> "[Appellant] does not require any further orthopedic or physical therapy treatment. No further treatment would be reasonable or necessary. It is my opinion that there is no objective evidence of a need for diagnostic testing, durable medical equipment, household help or transportation services. It is my clinical opinion, the claimant has fully recovered from any effect of the job-related injury that occurred on September 11, 2004."

An August 11, 2005 Office memorandum noted that appellant attempted to resume light duty on February 5, 2005 for four hours a day, but had not worked since February 2005. The Office also stated that "[h]er current medical [records] indicate that she cannot do anything repetitive and there is no work available with those restrictions."

In an August 5, 2005 handwritten statement, appellant asserted:

> "The job position that the postal service had offered me ... required me to lift, push and pull under 10 pounds, but has a repetitive motion that makes me pain in the abdomin (sic). Although I complained, the postal service kept giving me the same job duties. Therefore, the postal service has not accommodated me within all limitation and restrictions as specified by my treating physicians."

On August 3, 2005 Dr. Orellana reiterated appellant's restrictions of no lifting, pulling or pushing more than 10 pounds, on a nonrepetitive basis only.

By decision dated September 20, 2005, the Office found that appellant failed to establish a recurrence of disability for the periods beginning November 29, 2004 and February 20, 2005.

In memoranda dated February 9 and 16, 2006, the Office noted that it had informed appellant on February 7 and 16, 2006 that she had pending recurrence of disability claims at the time her employer was offering modified duty. It stated that, if her recurrence claim was not accepted for a worsening of her condition, she would not be paid compensation regardless of the job offer. If the recurrence claim was accepted, appellant would be compensated for wage loss. Thus, the job offer would not be at issue until the recurrence was adjudicated.

By decision dated May 2, 2006, the Office terminated compensation benefits based on appellant's refusal to accept a suitable job offer.

In a March 26, 2008 order,[2] the Board set aside the May 2, 2006 Office termination decision. It noted that appellant had outstanding claims for recurrences of disability. The record did not contain a copy of the alleged January 26 and/or February 20, 2005 recurrences, although these claims were referenced in Office memoranda dated May 16, 2005 and July 3, 2006. The Board found that the Office should have adjudicated the recurrence claims and not have proceeded with the May 2, 2006 termination decision. The Board directed the Office to conduct a search of its records and locate the forms which appellant purportedly filed in January or February 2005, together with any evidence she may have submitted in support of her claim, and determine the periods from January 2005 to May 2006 in which appellant was working and not working. The Board instructed the Office to adjudicate appellant's claim in accordance with *Terry Hedman*.[3]

By decision dated July 16, 2008, the Office found that appellant did not sustain a recurrence of disability as of January 26, 2005. It had searched its records but found no claims from appellant pertaining to this date. The Office reissued the September 20, 2005 decision which denied compensation for the periods beginning November 29, 2004 and February 20, 2005.

[2] Docket No. 07-1068 (issued March 26, 2008).

[3] 38 ECAB 222 (1986).

On November 12, 2008 appellant requested reconsideration. She did not submit any additional evidence in support of her request.

By decision dated January 29, 2009, the Office denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job 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 weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, 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.[4]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury. In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[5]

ANALYSIS -- ISSUE 1

The record does not contain any medical opinion establishing a change in the nature and extent of appellant's injury-related condition. Appellant has failed to submit a rationalized or probative medical report which relates her disability from November 27, 2004 to February 5, 2005 to her employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

Appellant has failed to submit contemporaneous medical evidence indicating that she was not capable of performing modified work offered by the employing establishment throughout the period November 27, 2004 to February 20, 2005. Dr. Miller found in a September 23, 2004 report that appellant was capable of working full time, for eight hours per day, with restrictions of no lifting, pulling or pushing exceeding 15 pounds, on a nonrepetitive basis. On November 27, 2004 appellant accepted a modified-duty job within these restrictions as a mail handler. She apparently worked six hours that day, and did not return to work until February 5, 2005. On or about February 20, 2005 appellant again stopped work. There is insufficient evidence of record to support her assertions that her absences from work, during any of the claimed periods, were causally related to her accepted conditions. The only medical report

[4] *Id.*

[5] For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

pertaining to this period is the April 14, 2005 report of Dr. Orellana, who advised that appellant demonstrated moderate abdominal and inguinal pain on December 3, 2004, January 20 and March 11, 2005, but was able to work full time within her prescribed restrictions. In a July 8, 2005 report, Dr. Israel found that she had no disability related to her accepted conditions and advised that she had fully recovered from her work injuries. Accordingly, the medical evidence contemporaneous to the periods of claimed disability do not establish that appellant was disabled on or after November 27, 2004 due to her accepted abdominal, inguinal and groin conditions. Appellant failed to provide sufficient medical evidence to support of her claim that she was disabled. The medical reports do not establish a worsening of her accepted conditions.[6]

The Board finds that the evidence also fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her modified position. Appellant first accepted a position as a modified mail hander within her restrictions on November 27, 2004. She went back off work on February 5, 2005. Appellant argued to the Board that she filed a claim for a recurrence on January 26, 2005; however, the Office and employing establishment searched their records and found nothing to establish this assertion. The record reflects that she has not worked since February 20, 2005, despite evidence indicating that the employing establishment offered her work within her physical restrictions throughout the periods for which she claimed disability. Appellant has failed to establish that she stopped working because there had been a change in the nature and extent of her limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The Board will affirm the July 16, 2008 Office decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.[7] 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.[8]

ANALYSIS -- ISSUE 2

In the present case, appellant did not establish that the Office erroneously applied or interpreted a specific point of law; she did not advance a relevant legal argument not previously considered by the Office; and she has not submitted any relevant or pertinent evidence not previously considered. Her reconsideration request was not accompanied by any evidence to show that the Office erroneously applied or interpreted a point of law nor did it advance a point

[6] *William C. Thomas,* 45 ECAB 591 (1994).

[7] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[8] *Howard A. Williams,* 45 ECAB 853 (1994).

of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.[9]

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability from January 25 to February 5, 2005 causally related to her accepted abdominal, inguinal and groin conditions. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2009 and July 16, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 22, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[9] The Board notes that appellant submitted additional evidence to the record following the July 16, 2008 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).