U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD A. NELSON and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, Okla.

Docket No. 96-1027; Submitted on the Record;
Issued April 2, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a back injury while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of his claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On July 13, 1995 appellant, then a 49-year-old letter carrier, filed an occupational disease claim, alleging that he sustained degeneration of the lumbar spine, low back syndrome and scoliosis while in the performance of duty. Appellant asserted that he had previously injured his back in 1985[1] while raising a window that was stuck on a truck and that this injury was followed by backaches and numbness in his leg and was aggravated by carrying mail. By decision dated October 16, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish that an injury was sustained as alleged. By letter decision dated December 13, 1995, the Office denied merit review in appellant's claim on the grounds that the request for reconsideration was *prima facie* insufficient to warrant review.

The Board has carefully reviewed the entire case record and finds that appellant has not met his burden of proof in establishing that he sustained a back injury while in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[2] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the

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[1] Later submitted evidence reveals that the prior injury occurred in 1988.

[2] *See Ronald K. White*, 37 ECAB 176 (1985).

presence or occurrence of the disease or condition;[3] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition was causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish causally relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific factors identified by claimant.[7]

In the present case, the Office found that the evidence was sufficient to establish that the claimed events, incidents or exposures occurred at the times, places and in the manners alleged, but further found that a medical condition resulting from the accepted exposure was not established. Thus, appellant did not present sufficient evidence to establish the second component of fact of injury. Relevant to the issue of whether the diagnosed condition was causally related to the identified factors of his federal employment, appellant submitted contemporaneous medical reports by two physicians. In a form report dated July 27, 1995, Dr. Tracey L. Asher, an osteopath, diagnosed lumbago and filled in boxes to indicate that the diagnosed condition was directly related to standing and walking as a postman over a period of time of at least 10 years. In a narrative report dated July 28, 1995, Dr. Asher diagnosed "possible degenerative joint disease, lumbar with scoliosis," chronic low back pain secondary to the aforementioned condition and possible piriformis syndrome on the left. Dr. Asher noted a history of a diagnosis of degenerative arthritis some ten years prior and that appellant had been living with chronic pain that he managed without medication. The former report is not sufficient to establish that the diagnosed condition was causally related to factors of appellant's federal employment since the doctor has not explained his conclusion and the report is not based on a complete history of injury or medical history.[8] The latter report by Dr. Asher is not sufficient to meet appellant's burden of proof since the doctor has not related the diagnosed condition to the identified work exposure or incident and has identified a degenerative condition as a possible cause of appellant's symptomatology.

Appellant also submitted a form medical report dated August 9, 1995 by Dr. Vernon C. Smith, a chiropractor. Dr. Smith diagnosed lumbar strain/sprain, lumbosacral sprain/strain,

[3] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[4] *See generally Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

[5] *William Nimitz, Jr.*, 30 ECAB 567 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384 (1960).

[7] *See William E. Enright*, 31 ECAB 426 (1980).

[8] *James A. Wyrich*, 31 ECAB 1805 (1980).

degenerative disc disease without myelopathy, old lumbar compression fracture and subluxation, same as outlined above. He noted a history of a 1985 injury when appellant was attempting to lift a window on a truck and hurt his back and repetitive lifting, bending and carrying weight. Dr. Smith responded in the affirmative to the question on the form of whether appellant's injuries were causally related to the above described history. Pursuant to section 8101(2) of the Federal Employees' Compensation Act, "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). Thus, Dr. Smith is considered a physician within the meaning of the Act since he did diagnose a subluxation of the spine as demonstrated by x-ray.[9] Nonetheless, his report is not sufficient to establish the second component of fact of injury as this report is not rationalized. Dr. Smith did not provide any explanation or rationale for his opinion that the diagnosed medical condition was causally related to the 1985 [sic] incident. Moreover, since the identified incident actually occurred in 1988 and inasmuch as the other causative factors identified were not designated as employment-related factors, Dr. Smith has not demonstrated a clear and accurate knowledge of appellant's medical or factual history. Therefore, this report is insufficient to meet appellant's burden of proof.[10]

In addition, the other medical evidence submitted by appellant in relation to his 1988 injury provides alternative causes for his claimed conditions. Specifically, Dr. Kelley identified osteoarthritis as a cause for appellant's low back strain when he examined appellant in February 1988. Dr. A. W. Laczkowski, a Board-certified radiologist, interpreted a March 1988 x-ray as revealing advanced hypertrophic osteoarthritic changes with narrowing of the disc interspaces at multiple levels, a wedging deformity of the L1 vertebral body, a compression fracture of the superior aspect of the L4 vertebral body and a slight scoliosis of the right side and spondylolysis at the L4-5 level without spondylolisthesis. In his supplemental statement identifying the work factors he believed caused his claimed condition, appellant noted that Dr. Kelly had told him that he "had severe degenerative arthritis which could not be helped by job restrictions on lifting, carrying, etc." After the February 1988 incident, appellant returned to his regular work without any apparent problem until he filed the occupational disease claim at issue herein. While appellant believes that his present claimed conditions are related to working without restrictions after the 1988 incident, none of the medical evidence presented provides a rationalized opinion relating the diagnosed conditions to the identified work factors. Therefore, appellant has not met his burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration.

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, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an

[9] *Linda L. Mendenhall*, 41 ECAB 532 (1990).

[10] *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[11] 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.[12] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[13]

By letter dated December 6, 1995, appellant requested reconsideration in his case. Appellant did not submit any additional evidence and asserted on reconsideration that Dr. Asher misinterpreted his statement of history of injury when appellant was examined on July 19, 1995. Since appellant has not asserted that the Office erroneously interpreted or applied a point of law, has not advanced a point of law or fact not previously considered by the Office and has not submitted any relevant or pertinent evidence not previously considered by the Office, his request for reconsideration is *prima facie* insufficient to warrant merit review of his claim.

The decisions of the Office of Workers' Compensation Programs dated December 13 and October 16, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 2, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] 20 C.F.R. § 10.138(b)(2).

[12] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[13] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).