U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS C. McELHANEY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Manhattan, Kans.

Docket No. 96-2155; Submitted on the Record;
Issued August 25, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in declining to reopen appellant's claim for merit review.

On June 27, 1988 appellant, then a 37-year-old distribution clerk, filed a notice of traumatic injury, claiming that he had hurt his right knee while moving mail carts. The Office accepted the claim for internal derangement of the right knee and paid appropriate compensation. Appellant had arthroscopic surgery on May 10, 1990.

On March 1, 1991 the Office issued a schedule award for a 21 percent loss of use of appellant's right lower extremity.

On October 9, 1993 appellant filed a notice of recurrence of disability,[1] claiming that his right knee would periodically "give way" and he would trip or fall. Appellant stated that he was walking back to his riding lawnmower at home when his right knee gave way; he tried to catch himself but his right foot entered the discharge chute and the blade mutilated his toes, four of which were amputated. Appellant explained that if his knee had not given way, he would not have hurt his foot.

In a letter dated January 6, 1994, the Office explained to appellant how to pursue his claim for a recurrence of disability, including the need for a detailed narrative medical report explaining the causal relationship between the original work injury and appellant's present condition.

In support of his claim appellant submitted the hospital report of his surgery and a personal statement explaining that since June 1991 he had experienced buckling of his right knee

[1] Appellant was terminated from the employing establishment following the 1988 injury. He then went to work for the Department of the Army at Fort Riley, Kansas.

several times, resulting in slips and falls but no serious injury. He added that his knee ached and hurt all the time. Appellant again described his accident, pointing out that when his knee buckled and he tried to catch himself, he put his right foot into the discharge chute.

On June 16, 1994 the Office denied the claim on the grounds that the evidence failed to establish a causal relationship between appellant's initial injury and his toes amputation. The Office noted the only reference to appellant's work injury in the hospital report of his toe amputation was a sentence that appellant had had surgery on his right knee.

Appellant timely requested written review of the record. In a decision dated February 6, 1995, the hearing representative denied the claim on the grounds that appellant had failed to establish a causal relationship between his accident and the initial work injury. The hearing representative found that the July 12, 1994 report from appellant's treating physician, Dr. A. Ervin Howell, an orthopedic surgeon, to be speculative in linking appellant's "trick knee" to the lawnmower incident. The hearing representative noted that Dr. Howell had apparently not examined appellant since 1991, that none of the contemporaneous hospital records mentioned any giving way of appellant's right knee and that the medical evidence showed no treatment of appellant's right knee from June 1991 until the lawnmower accident in October 1993.[2]

On February 2, 1996 appellant requested reconsideration and submitted a February 6, 1996 report from Dr. Howell along with hospital records and affidavits from two emergency technicians and two work supervisors commenting on appellant's unstable knee.

On April 17, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of the prior decision. The Office noted that Dr. Howell's report was merely a restatement of his previous opinion and that the witnesses' affidavits were irrelevant to the medical issue of causal relationship.

The Board finds that the Office acted within its discretion in declining to reopen appellant's claim for merit review.[3]

Section 8128(a) of the Federal Employees' Compensation Act[4] provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal regulations provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within

[2] On October 12, 1989 Dr. Howell stated that the expected permanent effects of appellant's injury would be arthritic symptoms. On June 10, 1991 Dr. Howell stated that appellant had a recurrence of pain and treated him with a corticosteroid injection.

[3] The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on June 26, 1996, the Board has jurisdiction only of the Office's nonmerit decision dated April 17, 1996.

[4] 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.[5]

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[6] Section 10.138(b)(2) of the implementing regulations provides that any application for review, which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[7] Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions that are contrary to both logic and probable deductions from established facts.[8]

In this case, the February 6, 1996 medical report from Dr. Howell simply reiterated his belief that appellant's accident was the direct result of his right knee's instability, which resulted from the 1988 work injury. The hospital records are merely copies of those submitted with appellant's initial claim. Thus, this evidence is repetitious of that already in the file and considered by the Office in its initial denial. Therefore, Dr. Howell's opinion and the hospital records are insufficient to require the Office to reopen appellant's claim.[9]

The affidavits from the emergency technicians who first treated appellant after the lawnmower accident note that he told them that he had stumbled and caught his right foot in the discharge chute. The statements from appellant's present supervisors relate that he had fallen or stumbled on the job but these incidents had not resulted in any injury. Because causal relationship is a medical issue, these documents are irrelevant, as is appellant's belief that his knee gave way and thus caused the lawnmower accident.[10]

In summary, the Board finds that none of the evidence submitted by appellant in support of reconsideration constitutes a rationalized medical opinion explaining how appellant's foot trauma in 1993 was causally related to the accepted knee injury in 1988. Thus, appellant has not shown that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence

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[5] *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

[6] 20 C.F.R. § 10.138(b)(1).

[7] 20 C.F.R. § 10.138(b)(2).

[8] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[9] *See James A. England*, 47 ECAB ___ (Docket No. 94-808, issued October 2, 1995) (finding that material repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

[10] *See Kathryn Haggerty*, 45 ECAB 383, 389 (1994) (finding that neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship).

not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.[11]

The April 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 25, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[11] *See Norman W. Hanson*, 45 ECAB 430, 435 (1994) (finding that the Office properly declined to reopen a claim because appellant presented no new and relevant evidence).