U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY F. WILLIAMSON and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, N.C.

Docket No. 97-111; Submitted on the Record;
Issued December 8, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that his claimed condition is causally related to his accepted work exposure sustained in the performance of duty prior to September 27, 1995; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138 constituted an abuse of discretion.

On September 25, 1995 appellant, then a 50-year-old letter carrier filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his claimed condition was caused by the wear and tear of his federal job over the past eight years. Appellant stated that while at work he began experiencing pain in his foot, sustained a tear of the meniscus of the knee and had a medial meniscectomy performed. Appellant first sought medical treatment, became aware of his claimed condition and realized his claimed condition was caused or aggravated by his federal employment on June 26, 1995. Appellant went on to explain that he delayed reporting his condition to his supervisor until July 31, 1995 because he "thought it had to be an injury like a fall, even with witnesses." The record shows that appellant stopped work intermittently from June 29, 1995, until he returned to restricted duty with no prolonged walking or standing on September 15, 1995. The record also shows that appellant was given a limited-duty assignment offer on November 15, 1995, which was accepted by appellant on November 17, 1995. The employing establishment, however, controverted appellant's claim.

Appellant submitted in support of his claim, a medical report from Dr. Matthew D. Ohl, a Board-certified orthopedic surgeon, dated September 14, 1995. In this report, Dr. Ohl stated that he had been following appellant's condition since June 29, 1995; that appellant had sustained a tear of his medial meniscus to the knee and required a meniscectomy; noted that this surgery was done fairly well; that appellant continues to have pain in his feet; that appellant has been treated for plantar fasciitis and had tried orthotics but continued to have moderate discomfort. Dr. Ohl stated: "I feel it would be best for [appellant] to not have a walking route and be assigned another position within the [employing establishment] which does not require prolonged walking or standing." Dr. Ohl also submitted several work status reports, medical condition reports, and physical limitations reports which revealed appellant's medical appointments, his physical

condition, and his continued restricted duty at work with no prolonged walking because of left foot pain. These documents also noted appellant's status post medial meniscectomy.

By letter dated November 14, 1995, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office specifically requested that appellant submit a comprehensive medical report from his treating physician which described his symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the doctor's opinion, with medical reasons, as to the cause of his condition and, an explanation of how specific work factors contributed to or caused his condition. Appellant was allotted thirty days within which to submit the requested evidence.

In a letter dated November 14, 1995, appellant responded by stating that he had to case mail two to three hours a day, then deliver mail on the street five to six hours a day. He indicated that walking 8 to 10 miles per day carrying up to 30 pounds of mail 5 days a week, sometimes 6 days a week. Appellant stated that "over a period say last year or year and half it, [appellant's knee and foot] started hurting/swelling. I thought I was on it too much so I would not work overtime I limited myself to 8 hours a day to protect it and give it more rest." Appellant did not submit any additional evidence with his response.

By decision dated February 27, 1996, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The Office found that, while appellant sustained an incident or exposure at the time, place and in the manner alleged, and while the incident or exposure occurred in the performance of duty, the medical evidence did not establish that the claimed condition or disability was caused, precipitated, accelerated or aggravated by appellant's federal employment.

In a letter dated March 6, 1996, appellant requested reconsideration of the Board's February 27, 1996 decision. Appellant attached to his letter a physical limitation report dated May 6, 1996, and additional work status reports dated March 14 and 18, 1996, diagnosing appellant with chronic plantar fasciitis and indicating when appellant could return to restricted work doing a sit down job.

By decision dated July 26, 1996, the Office informed appellant that because his request for reconsideration neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant a review of its February 27, 1995 decision.

The Board finds that appellant had not met his burden of proof in establishing that his claimed condition is causally related to his accepted work exposure sustained in the performance of duty prior to September 27, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific

[1] 5 U.S.C. §§ 8101-8193.

condition for which compensation is claimed are causally related to the employment injury.[2] 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) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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 is causally related to the employment factors identified by the claimant.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] 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 the 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 employment factors identified by the claimant.[7]

In the instant case, it is not disputed that appellant sustained an incident or exposure at the time, place and in the manner alleged, the incident or exposure occurred in the performance of duty, and that appellant has a chronic plantar fasciitis condition. However, the medical evidence did not establish that the claimed condition or disability was caused, precipitated, accelerated or aggravated by appellant's federal employment. Appellant has submitted no medical evidence establishing that his chronic plantar fasciitis condition is a result of the accepted employment exposure, or that this condition is causally related to any employment factors or conditions. Dr. Ohl did not provide a detail description of appellant's employment duties; a history of injury, or a physician reasoned medical opinion attributing appellant's complaints to a chronic plantar fasciitis condition sustained at work because of wear and tear on appellant's federal job over the past eight years. In addition, appellant was advised of the deficiencies in his claim on November 14, 1995 and afforded an opportunity to provide supportive evidence, however, medical evidence addressing whether appellant's diagnosed condition arose out of his federal employment was not received.[8] Consequently, the evidence of

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

record failed to establish that the diagnosed condition or disability was causally related to any workplace factor, and is, therefore, insufficient to establish that appellant sustained a condition or disability in the performance of duty prior to September 27, 1995. Therefore, the medical evidence submitted by Dr. Ohl, is of little probative value.[9]

The Board, however, has held that an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case.[10] As appellant has not submitted rationalized medical evidence, based on a complete history, explaining how and why appellant's diagnosed condition was caused or aggravated by his federal employment, the Office properly denied appellant's claim for compensation.

The Board further finds that the refusal of the Office in its July 26, 1996, decision to reopen appellant's case for further a merit review under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138 does not constitute an abuse of discretion.[11]

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wished the Office to reconsider and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law; or
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> "(ii) Advancing a point of law or fact not previously considered by the Office; or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office." [12]

Section 10.138(b)(2) provides that any application for review of the merits of the claim 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.[13] 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.[14]

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[9] *Id.*

[10] *See id.4, Victor J. Woodhams, supra* note 3.

[11] Section 8128(a) provides in relevant part: "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

[12] 20 C.F.R. § 10.138(b)(1)

[13] 20 C.F.R. § 10.138(b)(2)

[14] *See Eugene F. Butler*, 36 ECAB 393 (1984).

Appellant has neither shown that the Office erroneously applied or interpreted a point of law, nor has he advanced a point of law or fact not previously considered by the Office, nor has he submitted relevant and pertinent evidence not previously considered by the Office. Appellant's submission of Dr. Ohl's physical limitation report dated May 6, 1996, and work status reports dated March 14 and 18, 1996, failed to provide an opinion establishing causal relationship between the claimed condition and the accepted incident or exposure or hat there was a causal connection between appellant's chronic plantar fasciitis condition and 0any workplace factor. Therefore, these documents were not relevant or pertinent to the main issue presented on appeal, *i.e*., whether appellant's claimed condition is causally related to appellant's accepted work exposure sustained in the performance of duty prior to September 27, 1995. Evidence which is not relevant to the pertinent issue of a case does not require reopening a case for a merit review.[15]

Appellant's March 6, 1996 request for reconsideration, and attached evidence, provided no new and relevant evidence to warrant a merit review of the Office's decision. Appellant failed to raise substantive legal questions, and/or provide new and relevant evidence to warrant a merit review of the Office's decision. Therefore, although the evidence submitted by appellant on reconsideration, was evidence not previously considered by the Office, they essentially repeats evidence which was already considered by the Office. As appellant's requests for reconsideration failed to meet at least one of the three requirements for obtaining a merit review of this case, the Board finds that the Office's refusal to reopen the case for a merit review did not constitute an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated July 26 and February 27, 1996 are affirmed.

Dated, Washington, D.C.
December 8, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[15] *See James E. Salvatore*, 43 ECAB 309 (1991); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).