U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDRIS B. DAWKINS and PANAMA CANAL COMMISSION, INDUSTRIAL DIVISION, Cristobal, Panama

Docket No. 97-2880; Submitted on the Record;
Issued August 11, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after May 16, 1994 due to his October 16, 1979 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after May 16, 1994 due to his October 16, 1979 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.[1] This burden includes the necessity of furnishing 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 rationale.[2] Where no such rationale is present, medical evidence is of diminished probative value.[3]

In the present case, the Office accepted that appellant sustained an employment-related lumbosacral strain in the performance of duty on October 16, 1979 and paid compensation for periods of disability. Appellant later claimed that he sustained a recurrence of disability on

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[1] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[2] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[3] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

May 16, 1994 due to his October 16, 1979 employment injury and, by decision dated September 16, 1996, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof. By decision dated April 4, 1997, the Office denied appellant's request for merit review of its September 16, 1996 decision.

Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on May 16, 1994 due to his October 16, 1979 employment injury. Appellant submitted a May 25, 1994 report, in which Dr. Daniel Clua, an attending Board-certified anesthesiologist, indicated that he had been treated for chronic pain in his right testicle and stated, "We believe this situation may have resulted from an occupational accident our patient suffered years ago on the job." This report of Dr. Clua, however, is of limited probative value on the issue of causal relationship in that it contains an opinion which is speculative in nature.[4] In a form report dated June 18, 1994, Dr. Marta Roa-Degracia, an attending physician Board-certified in physical medicine and rehabilitation, diagnosed lumbar spondylosis, L4-5 radiculopathy and thoracic lumbar scoliosis, indicated that these conditions were aggravated by appellant's October 16, 1979 employment injury and stated that appellant was totally disabled from May 6 to June 12, 1994 due to these conditions. Dr. Roa-Degracia did not, however, provide adequate medical rationale in support of her conclusions on causal relationship.[5]

Neither Dr. Clua nor Dr. Roa-Degracia described appellant's October 16, 1979 employment injury, a lumbosacral strain, or explained how such a soft-tissue injury could have caused disability more than 14 years after the fact. They did not adequately explain why appellant's problems were not solely due to his underlying, nonwor-related back and testicular problems. Appellant also submitted numerous reports, dated between late 1993 and mid 1996, in which attending physicians described the treatment of his back and testicular problems. However, these reports are of limited probative value on the relevant issue of the present case, in that they do not contain an opinion that appellant sustained disability on or after May 16, 1994, due to his October 16, 1979 employment injury.[6]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[7] Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

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[4] *See Jennifer Beville*, 33 ECAB 1970, 1973 (1982), *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (finding that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship).

[5] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[6] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (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).

[7] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[8] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[9] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[10] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[11]

In support of his reconsideration request, appellant submitted an October 4, 1996 report in which Dr. Avelino Guiterrez, an attending Board-certified neurosurgeon, detailed his low back condition and stated, "The origin of all these clinical and radiological findings may be the accident on the job in 1979." However, this report is of limited probative value due to its speculative opinion on causal relationship. Therefore, it does not relate to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that he sustained a recurrence of disability on May 16, 1994 due to his October 16, 1979 employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[12] Appellant submitted other medical reports in support of his reconsideration request, but they do not contain any opinion on causal relationship and also do not relate to the main issue of the present case.

In the present case, appellant has not established that the Office abused its discretion in its April 4, 1997 decision by denying his request for a review on the merits of its September 16, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

[8] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[9] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[10] 20 C.F.R. § 10.138(b)(2).

[11] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[12] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated September 16, 1996 and April 4, 1997 are affirmed.

Dated, Washington, D.C.
August 11, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member