U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. HURLEY and DEPARTMENT OF THE INTERIOR, NATIONAL INTERAGENCY FIRE CENTER, Boise, Ida.

Docket No. 97-2401; Submitted on the Record;
Issued June 21, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a left knee injury in the performance of duty on April 16, 1996; 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 left knee injury in the performance of duty on April 16, 1996.

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 the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

In the present case, appellant claimed that he sustained a left knee injury at work on April 16, 1996 while running for his daily physical training workout.[7] By decision dated January 3, 1997, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a left knee injury in the performance of duty on April 16, 1996 and, by decision dated May 9, 1997, the Office denied appellant's request for merit review of his claim.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a left knee injury in the performance of duty on April 16, 1996. Prior to the Office's January 3, 1997 decision, appellant did not submit any medical evidence in support of his claim. By letter dated October 25, 1996, the Office had requested that appellant submit medical evidence, but appellant did not respond to this request. As noted above, appellant has the burden of proof to submit medical evidence establishing that the employment incident caused a personal injury. Therefore, the Office properly determined, in its January 3, 1997 decision, that appellant did not meet his burden of proof to show that he sustained a left knee injury in the performance of duty on April 16, 1996.

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 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 must also file his or her application for review within one year

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] Appellant indicated that the injury occurred on Vista Avenue in Boise.

[8] 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).

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 a July 12, 1996 report in which Dr. Frank R. Heckl, an attending Board-certified orthopedic surgeon, stated that he had not seen appellant in over four years and noted that appellant had undergone left knee surgery, including a lateral meniscus and medial meniscus repair. Dr. Heckl indicated that appellant was doing extremely well, but was bothered by a "pop" in the lateral aspect of his left knee joint. He stated, "This started after he did a 13-mile trail run in Boise, trying to up the ante as far as his training was concerned and developing popping soon thereafter." This report is of limited probative value on the relevant issue of the present case in that Dr. Heckl did not provide any clear indication that appellant sustained a left knee injury on April 16, 1996 when he engaged in his daily physical training run on Vista Avenue in Boise.[12] It is unclear whether the "13-mile trail run" is the same incident as the one alleged by appellant as causing his injury. Moreover, Dr. Heckl's report is of limited probative value for the further reason that he did not provide any notable discussion of the implicated incident and did not provide any explanation of the medical process by which it would have caused injury.[13] Therefore, Dr. Heckl's report does not adequately relate to the main issue of the present case, *i.e.*, whether appellant submitted sufficient probative medical evidence to establish that he sustained an employment-related injury on April 16, 1996. 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.[14]

Appellant also submitted an October 4, 1996 report in which Dr. Heckl stated that appellant called him on that date and reported having problems with his left knee. Dr. Heckl noted that he suspected appellant had experienced a breakdown of his lateral meniscus repair and indicated that this repair was performed because appellant's job required that he "remain on a very high physical fitness program." He stated, "It would be my belief that this is directly related to his original workers' compensation injury, and I think it should be covered by workers' compensation…." This report contains the same deficiencies as Dr. Heckl's July 12, 1996 report, in that Dr. Heckl did not provide a clear opinion that appellant's left knee condition was related to the reported April 16, 1996 employment incident. In a form report dated April 1, 1997, Dr. Kirk J. Lewis, an attending Board-certified orthopedic surgeon, listed the date of injury as "April 6, 1996" and indicated that appellant reported no new complaints upon examination on April 1, 1997. Dr. Lewis did not, however, indicate that appellant sustained

[10] 20 C.F.R. § 10.138(b)(2).

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

[12] *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).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

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

injury due to the April 16, 1996 employment incident. Appellant submitted other reports dated between late 1996 and early 1997, but none of these reports discussed the cause of his left knee condition. Due to their limited probative value and relevance to the main issue of the present case, the reports are not sufficient to require reopening of appellant's claim on the merits.

In the present case, appellant has not established that the Office abused its discretion in its May 9, 1997 decision by denying his request for a review on the merits of its January 3, 1997 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.

The decisions of the Office of Workers' Compensation Programs dated May 9 and January 3, 1997 are affirmed.

Dated, Washington, D.C.
June 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member