U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM MacINTOSH and DEPARTMENT OF THE NAVY, PUBLIC WORKS CENTER, Colts Neck, NJ

Docket No. 00-1567; Submitted on the Record;
Issued April 6, 2001

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained a work-related injury on February 27, 1998; 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.

On March 4, 1998 appellant, than a 45-year-old truck driver, filed a claim for traumatic injury (Form CA-1) alleging that on February 27, 1998 he injured his lower back while in the performance of duty.

In a medical report dated March 20, 1998, Dr. Roy D. Mittman, appellant's treating physician Board-certified in orthopedic surgery, stated that appellant had had an accident in 1979 but that he was "okay for 10 [to] 15 years. No hospitalization since then." He then noted that two months earlier appellant "started experiencing right buttock and right leg excruciating pain, with numbness and tingling going down to the ankle."

By letter dated April 20, 1998, the Office advised appellant that he would need to submit additonal information in order for the Office to process his claim.

By decision dated August 4, 1998, the Office denied appellant's claim. By letter dated September 3, 1998, appellant, through counsel, requested an oral hearing.

A hearing was held on March 24, 1999 and appellant submitted a revised medical report from Dr. Mittman dated February 2, 1999 which included appellant's history of injury noting that on February 27, 1998 appellant was injured while at work. He noted that based on appellant's computerized tomography (CT) scan he had a low back problem which was exacerbated as a result of the February 27, 1998 incident causing bilateral chronic spondylosis at L5-S1. On July 12, 1999 the hearing representative issued a decision finalized the same day affirming the Office's August 4, 1998 decision. By letter dated November 9, 1999, appellant, through counsel, requested reconsideration. In support of the request for reconsideration,

appellant resubmitted the revised February 2, 1999 medical report from Dr. Mittman. In a nonmerit decision dated January 5, 2000, the Office denied appellant's request for reconsideration.

The Board has duly reviewed the case record on appeal and finds that appellant did not establish that he sustained an injury on February 27, 1998 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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.[1]

These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

In this case, the Office accepted that the first component, the employment incident, occurred as alleged.[3] The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. Causal relationship is a medical issue[4] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. 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 established incident or factor of employment.[7]

The medical evidence appellant submitted consisted of, in essence, two medical reports, both from Dr. Mittman, one dated March 20, 1998. In that report, he notes a history of injury beginning in January 1998 when appellant, while driving, started experiencing right buttock and

[1] *Mary J. Briggs*, 37 ECAB 578 (1986).

[2] *Id.*

[3] *Id.*

[4] *Id.*

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

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

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

right leg pain. However, in his February 2, 1999 report Dr. Mittmen included appellant's history of injury as a preexisting low back injury that was exacerbated as a result of the alleged February 27, 1998 work-related injury. However, since the hearing representative determined that the incident occurred, it is appellant's burden to prove that an injury occurred as a result of the incident. However, in neither report did Dr. Mittmen provide a rationalized medical opinion in support of a causal relationship between appellant's condition and his employment. As appellant has submitted no reasoned medical opinion supporting a causal relationship between the February 27, 1998 incident and his medical condition, he has not met his burden of proof.[8]

Further, the Board 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,[9] the Office's regulations provide that a claimant must: show that the Office erroneously applied or interpreted a point of law; advance a point of law not previously considered by the Office; or submit relevant and pertinent evidence not previously considered by the Office.[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] To be entitled to 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.[12]

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[13] and that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[14] However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[15]

[8] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[9] 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).

[10] 20 C.F.R. § 10.606(b)(2).

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

[12] 20 C.F.R. § 10.607(a).

[13] *Daniel Deparini*, 44 ECAB 657 (1993); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[14] *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[15] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

In his November 9, 1999 reconsideration request, appellant merely resubmitted medical evidence that the Office had previously considered. Consequently, the evidence submitted by appellant did not meet the requirements set forth in 20 C.F.R. § 10.606(b), noted above.

The decisions of the Office of Workers' Compensation Programs dated January 5, 2000 and July 12, 1999 are hereby affirmed.

Dated, Washington, DC
April 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member