U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES L. BEECHAM and DEPARTMENT OF THE AIR FORCE, SACRAMENTO AIR LOGISTICS CENTER, McCLELLAN AIR FORCE BASE, CA

Docket No. 00-2029; Submitted on the Record;
Issued April 23, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury to his right leg in the performance of duty causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On August 24, 1999 appellant, then a 64-year-old ground power mechanic, filed a traumatic injury claim, alleging that on August 2, 1999 he experienced pain and swelling in his right leg while walking up and down the stairs at work. Appellant did not stop work.

Evidence submitted with appellant's claim included a record of injury and treatment dated August 24, 1999 from Dr. Hueseini Haveliwala, a base physician, who diagnosed peripheral neuropathy and vascular disease of both legs, age onset diabetes mellitus and chronic statis dermatitis of the right leg. Administrative permits dated August 24 and 26, 1999 signed by Dr. Haveliwala indicated that appellant was sent home from work for those two days. A disability certificate indicated that appellant was also off work from August 26 to 31, 1999.

By letter dated September 23, 1999, the Office asked appellant to provide additional factual information and a narrative medical report from a physician, which included an opinion on the relationship of the diagnosed condition(s) to his federal employment activity.

In an August 25, 1999 report, Dr. Robyn A. Lakamsani noted that, appellant has chronic pain in the lower extremities which sometimes worsens with exercise, sometimes pain occurs at rest with numbness. Post-traumatic pain, stasis dermatitis and varicesities was diagnosed. Dr. Lakamsani referred appellant to a vascular surgeon.

In a facsimile dated September 27, 1999, Dr. David L. Haugen, a Board-certified vascular surgeon noted his physical examination findings and diagnosed a venous insufficiency

of the right lower leg, with secondary stasis dermatitis. No evident arterial insufficiency of either leg was noted. Hypertension, Type II diabetes mellitus were also diagnosed along with history of past myocardial infarction. Surgical compression hose was recommended any time appellant was to be on his feet for a prolonged period of time.

In a decision dated October 26, 1999, the Office denied appellant's claim, noting that "additional factual evidence we requested from you was not received and the medical reports submitted did not provide a medically reasoned opinion on the relationship of the diagnosed conditions and factors of your employment."

In a November 16, 1999 reconsideration request, appellant indicated that additional medical evidence was forthcoming. In a December 8, 1999 letter, the Office allotted appellant 30 days to submit such evidence.

In a decision dated February 15, 2000, the Office denied appellant's application for review as *prima facie* insufficient to warrant modification of its previous decision.

On February 17, 2000 the Office received additional medical evidence from appellant. In an undated report, Robert L. Johnson, a physician's assistant, diagnosed right lower leg stasis dermatitis. A history of age onset diabetes mellitus was under control. The report noted that appellant had a direct trauma to his right lower leg in 1992 with chronic intermittent pain ever since. A January 21, 2000 medical report from J. Gary Glocheski, a chiropractor, noted venous development to be greater on appellant's right leg. Also submitted was medical evidence previously of record.

In a decision dated February 22, 2000, the Office denied appellant's reconsideration request, finding that the evidence submitted was either repetitious or irrelevant to the claim. The Office advised that this decision replaced its February 15, 2000 decision, as the basis of the earlier decision was incorrect.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury to his right leg causally related to factors of his federal employment.

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 an injury was sustained in the performance of the duty alleged and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (2) a factual statement identifying 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 appellant 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 appellant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5]

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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.

In this case, there is no rationalized medical opinion that definitively supports a causal relationship between appellant's right leg condition and his federal employment. The base physicians, Drs. Haveliwala and Lakamsani, who saw appellant a few weeks after his injury, did address the cause of his diagnosed conditions. Dr. Haugen merely reported that appellant had a venous insufficiency of the right lower leg with secondary statis dermatitis and made no statement that could be perceived as relating appellant's right leg conditions to his employment. Although, he recommended surgical compression hose if appellant were to be on his feet for a prolonged period of time, he did not provide a medical discussion indicating how walking up and down stairs could have or would aggravate appellant's conditions.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[6] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The Board further finds that the Office acted within its discretion in refusing to reopen appellant's case for a review on the merits.

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injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(a)(15), (16).

[4] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *Ern Reynolds*, 45 ECAB 690 (1994).

[6] *Victor J. Woodhams*, 41 ECAB 345, 353-54 (1989).

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[7] Section 10.607 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[8] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.[9]

In support of his reconsideration request, appellant submitted a medical report from a physician's assistant and from a chiropractor. In this case, the reports of a physician's assistant and that of the chiropractor are not considered to be medical evidence under the Act. Section 8101(2) of the Act[10] defines "physician" as; "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractor and osteopathic practitioners." A physician's assistant is not a physician within the meaning of the Act.[11] Section 8101(2) further recognizes a chiropractor as a physician "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[12] As this case concerns appellant's right leg condition, a chiropractic report has no probative value.

Furthermore, appellant submitted medical evidence that was previously in the record. The Board has held that, material, which is 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.[13]

[7] 20 C.F.R. § 10.606.

[8] 20 C.F.R. § 10.607.

[9] *John E. Watson*, 44 ECAB 612, 614 (1993).

[10] 5 U.S.C. §§ 8101-8193.

[11] *Curtis L. Lord*, 33 ECAB 1482, 1486 (1982).

[12] 5 U.S.C. § 8101(2); *see Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

[13] *James A. England*, 47 ECAB 115, 119 (1995).

The February 22, 2000 and October 26, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 23, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member