

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER L. PROVENCIAL and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 00-81; Submitted on the Record;
Issued January 24, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant established that he sustained a neck condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review under 5 U.S.C. § 8128.

On April 21, 1998 appellant, then a 50-year-old letter carrier, filed an occupational disease claim, (Form CA-2), alleging that, based on 30 years of carrying and casing mail and two instances of injuries sustained when he was attacked by dogs, he developed herniated discs in the cervical area and possible carpal tunnel syndrome. He stated that he first became aware of his condition on April 17, 1984 and realized that it was caused or aggravated by his employment on April 10, 1998. The employing establishment noted that appellant was out of work from April 13 to 20, 1998, when he worked one hour that day. Appellant was then seen by his doctor who released appellant "to work on April 7, 1998 (sic) limited to casing only, no carrying."

In a medical report dated May 7, 1998, Dr. Steven I. Mann, a Board-certified physiatrist, stated that he examined appellant on May 6, 1998 and reported appellant's subjective symptoms of pain in the cervical area radiating to the right upper extremity to the fifth digit. Dr. Mann noted that a nerve conduction velocity study revealed a terminal dysfunction of the right median nerve at the wrist but that the remainder of the nerve conduction studies were normal and that electromyography (EMG) studies also conducted on May 6, 1998 were normal as well.

By letter dated May 28, 1998, the Office advised appellant that the evidence of file was insufficient to establish his claims for a herniated cervical disc and possible carpal tunnel syndrome, advised him of the type of factual and medical evidence needed to establish his claims and requested that he submit such evidence. The Office requested that appellant describe the employment-related activities which he believed caused his conditions. The Office also requested that appellant submit a comprehensive medical report from his treating physicians which described his symptoms, results of examinations and tests, diagnosis, the treatment provided, the effect of treatment, and the doctors' opinions, with medical reasons, on the cause

of appellant's conditions. Appellant was allotted 30 days within which to submit the requested evidence.¹

In a medical report dated June 8, 1998, Dr. B. Barry Chehrazi, appellant's treating physician Board-certified in neurological surgery, stated that a magnetic resonance imaging scan (MRI) revealed "rather large posterior osteophytes at C5-6 as well as disc herniation causing compression of the spinal cord."

By decision dated July 16, 1998, the Office denied appellant's claim on the grounds that appellant's narrative report and "the medical report from Dr. Chehrazi" failed to establish a causal relationship between appellant's claimed condition and his employment,² "specifically to your dog attack injury of July 8, 1997 on the ongoing work factors of your employment."

On August 15, 1998 appellant requested an oral hearing. Prior to the January 26, 1999 hearing,³ he submitted several medical reports. In a medical report dated July 27, 1998, Dr. Chehrazi stated that appellant had been under his care since April 16, 1998. He added:

"Work-up revealed that [appellant] had a C5-6 disc herniation.... [Appellant's] history indicates that he worked as a letter carrier with the [employing establishment] for the past 30 years. He was involved in two dog attacks in 1990 and 1997, with exacerbation of symptoms. [Appellant] informs me that he suffered a concussion in relation to his injury in 1997 and had a marked increase in his neck and upper extremity symptoms. His symptoms persisted until surgery on June 11, 1998 where I performed a one-level anterior cervical discectomy fusion and instrumentation....

"It is likely that [appellant's] carpal tunnels are related to repeated work injuries in his job as a mail carrier."

In a medical report dated August 28, 1998, Dr. Chehrazi stated that appellant's right upper extremity symptoms which were present prior to surgery had cleared. He added that appellant remained symptomatic with "some neck pain and has developed a new onset of tingling numbness of the neck and shoulder and left upper extremity extending towards his thumb." Dr. Chehrazi stated that a cervical spine x-ray at six weeks post operation did not show incorporation of the graft, but that the alignment and instrumentation were normal.

¹ The Board notes that appellant filed one claim but listed two separate medical conditions, herniated disc pulposus and carpal tunnel syndrome. The Office addressed appellant's evidentiary requirements in its May 28, 1998 letter as if one claim with one condition was filed. For clarity, this decision uses the plural when addressing appellant's two medical conditions.

² In its decision the Office did not state whether Dr. Chehrazi addressed appellant's herniated disc or his carpal tunnel syndrome condition.

³ The Board notes that the hearing date contained in the first page of the transcript incorrectly reads January 26, 1998.

In a medical report dated April 16, 1998 and received by the Office on February 1, 1999, Dr. Chehrazi related appellant's history of injuries noting that he was involved in two dog attacks in 1990 and 1997 which exacerbated his symptoms. He noted appellant's subjective complaints of pain to the back of his neck, forearms, wrist, on the anterior aspect of his thigh and a general history of back pain. Dr. Chehrazi also noted appellant's pain in his feet, numbness in both hands, and weakness in the neck. He diagnosed appellant with C5-6 large central and right sided disc herniation, reversal of cervical lordosis, transient episodes of dizziness, possible right meralgia paresthetica and possible bilateral carpal tunnel syndrome.

On March 10, 1999 the hearing representative issued a decision which was finalized the same day. In that decision, the hearing representative determined that appellant failed to establish that "the claimed neck condition was work related" because the "evidence of record did not establish that the claimed medical conditions were causally related to employment."⁴

Appellant requested reconsideration and, on May 4, 1999, the Office denied the request for reconsideration in a nonmerit decision on the grounds that the new evidence was repetitious and insufficient to warrant a review of the March 10, 1999 decision.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a neck condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act⁵ 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 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.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

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 a disease or condition for which compensation is claimed; (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 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.⁷

⁴ The Board notes that the hearing representative stated in his decision that the Office had accepted appellant's claim for carpal tunnel syndrome. At the hearing, appellant's spouse stated that the carpal tunnel syndrome claim had been approved. The record does not reveal a notice of acceptance from the Office.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. 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, 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 identified by claimant.⁸

In this case, the Office denied appellant's claim on the grounds that appellant failed to submit a rationalized medical opinion to establish the causal relationship between his alleged neck condition and factors of his federal employment. Although appellant relies on medical reports from Dr. Chehrazi to substantiate his claim, at no time did Dr. Chehrazi relate appellant's neck condition to his employment. Indeed in his July 27, 1998 report, Dr. Chehrazi notes appellant's history of injuries including his dog attacks, concussion and related increase in symptoms. However, he related only appellant's carpal tunnel syndrome to his employment in spite of his having performed a cervical discectomy fusion six weeks earlier. Dr. Chehrazi did not provide a rationalized medical opinion establishing a causal relationship between appellant's neck condition and his employment. In the absence of a rationalized medical opinion establishing either that appellant's neck condition was causally related to or aggravated by factors of his federal employment, the Office properly denied compensation.

The Board also finds that the Office properly denied appellant's request for a merit review under section 8128.

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁹ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁰ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹ 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.¹² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹³ Where a

⁸ *Victor J. Woodhams, supra* note 7.

⁹ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁰ 20 C.F.R. § 10.606(b)(2) (1999).

¹¹ 20 C.F.R. § 10.608(b) (1999).

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.¹⁴

In conjunction with his reconsideration request, appellant submitted an attending physician's report originally dated October 13, 1998 but amended by Dr. Chehrazi on April 5, 1999 in which he checked a box "yes" indicating that appellant's herniated nucleus pulposus and carpal tunnel syndrome were causally related to his employment. However, the Office properly noted that this report was essentially the same as the April 18, 1998 report and thus it is repetitive evidence.¹⁵ Because appellant failed to comply with the requirements of section 8128, the Office acted within its discretion in denying his request for a merit review.

The decisions of the Office of Workers' Compensation Programs dated May 4 and March 10, 1999 are hereby affirmed.

Dated, Washington, DC
January 24, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹⁴ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

¹⁵ The Board notes that Dr. Chehrazi's report was dated April 16, 1998.