U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE ELKO and DEPARTMENT OF THE AIR FORCE, PATRICK AIR FORCE BASE, FL

Docket No. 99-1658; Submitted on the Record;
Issued January 22, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, VALERIE D. EVANS-HARRELL

The issue are: (1) whether appellant has established that he sustained a back injury causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On July 24, 1998 appellant filed an occupational disease claim alleging that he sustained a lower back injury as a result of lifting at work. Appellant noted that he had returned to work following a March 1987 injury and had continued to work until October 1991, when he stopped working. A review of the record indicates that appellant did have a prior claim for injury on March 20, 1987, which was accepted for contusion and strain of the left leg and knee, arthritis left knee, chondromalacia of the left lateral tibial plateau and right rotator cuff injury.[1]

Pursuant to the prior claim for injuries on March 20, 1987, appellant had contended that he sustained a consequential injury to his back, as a result of an altered gait produced by his left knee injury. The Office denied his claim in decisions dated February 26 and July 22, 1997, and February 20, 1998.[2]

By decision dated September 21, 1998, the Office determined that appellant had not established an injury causally related to lifting at work. In a decision dated April 2, 1999, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

[1] OWCP File No. 06-0413666.

[2] The Board does not have jurisdiction over these decisions as they were issued more than one year before appellant filed his appeal in this case. 20 C.F.R. § 501.3(d)(2).

The Board finds that appellant has not established a back injury causally related to lifting at work.

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 the 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.[3] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.[4] Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.[5]

In this case, appellant has identified lifting at work following his return to work after the March 20, 1987 employment injuries. The record indicates that appellant worked intermittently from April 1987 through October 1991.[6] It does not appear to be in dispute that appellant's job required some lifting. Appellant did not, however, provide a detailed description of the identified job duties during this period, and the employing establishment has contested appellant's assertion, on his claim form, that he was required to lift up to 150 pounds.[7]

With respect to the medical evidence, the Board finds that the evidence is of diminished probative value on the issue of causal relationship. In a report dated September 11, 1997, Dr. Duane L. Seig, an orthopedic surgeon, noted that appellant had stated that after his knee injury he had to carry out repetitive lifting, "which produced the onset of his back pain. He attributes this to the fact that he was unable to squat in order to pick up things, which placed the load on his back." Dr. Seig indicated that appellant reported chronic low back pain until the present time, and based on this history, "there would appear" to be a connection between the job injury, the knee problem and the low back pain.

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

[4] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[5] *Manuel Garcia*, 37 ECAB 767 (1986).

[6] The record indicates, for example, that appellant filed a notice of recurrence of disability commencing May 20, 1990; he was on the periodic rolls and a report of termination of disability (Form CA-3) indicates he returned to light duty on May 14, 1991.

[7] A commissary officer from the employing establishment stated that there were no boxes weighing 150 pounds, the maximum weight he could recall was 60 pounds and that was in the dry warehouse, not the meat department.

In assessing the probative value of this report to the issue presented, the Board notes that Dr. Seig had previously stated, in an October 24, 1996 report, that it appeared appellant had developed back pain as a result of an altered gait arising from the knee problem. The September 11, 1997 report does not provide a complete description of appellant's employment duties, nor does it refer to the medical history and the apparent lack of contemporaneous evidence regarding a back condition and lifting at work. Dr. Seig does not provide a clear diagnosis of a back injury, with a reasoned opinion on causal relationship to lifting at work prior to October 1991. In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.[8] This is especially true in view of the fact that appellant had not performed the implicated job duties for nearly eight years prior to Dr. Seig's report.

Appellant also submitted a September 2, 1998 report from Dr. Gary M. Weiss, a neurologist, who reported that appellant's job duties included lifting up to 150 pounds, which aggravated his back pain. As noted above, the lifting of up to 150 pounds has not been factually established. In his history, Dr. Weiss indicated that appellant was on light duty in 1991, that appellant reported that he did have to lift in excess of his 10-pound restriction, and that appellant reported that this was noted in Dr. Seig's medical records. Again, appellant did not provide a detailed description of the identified job duties during this period, nor does there appear to be in the record any medical evidence from that period discussing causal relationship between lifting at work and a diagnosed back injury. Dr. Weiss opined that appellant's "low back pain/injury" was a direct result of the employment injury to his knee, stating that the knee was unable to support appellant's weight, much less the weight he was being asked to lift, and this caused pressure and strain to be placed on the low back. Dr. Weiss does not provide a clear diagnosis of the back injury he believed was causally related to employment lifting, nor does he clearly explain the nature, extent and duration of any aggravation caused by work activities.

In the absence of a reasoned medical opinion, based on a complete and accurate background, as to causal relationship between a diagnosed back condition and lifting at work prior to October 1991, the Board finds that appellant has not met his burden of proof in this case.

The Board further finds that the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[9] the Office's 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously

[8] *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] 5 U.S.C. § 8128(a) (providing that "[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").

considered by the Office.[10] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[11]

In the present case, appellant submitted additional medical evidence after the September 21, 1998 merit decision. In reports dated September 24 and November 10, 1998 and March 2, 1999, Dr. Weiss provided results on examination, noting that appellant continued to have back pain.[12] Dr. Weiss does not discuss causal relationship with lifting at work prior to October 1991. The Board finds that appellant did not submit new evidence that is relevant and pertinent to the underlying medical issue in this case. Appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly denied the request for reconsideration without merit review of the claim.

The decisions of the Office of Workers' Compensation Programs dated April 2, 1999 and September 21, 1998 are affirmed.

Dated, Washington, DC
January 22, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

[10] 20 C.F.R. § 10.606(b)(2).

[11] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

[12] Appellant also submitted evidence regarding a right shoulder condition, which does not discuss the relevant issues.