U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRYAN L. MORRILL and DEPARTMENT OF THE NAVY, MARINE CORPS -- AIR STATIONS, Yuma, AZ

Docket No. 01-270; Submitted on the Record;
Issued September 21, 2001

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an injury in the performance of duty on May 18, 2000; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for merit review.

On May 22, 2000 appellant, then a 49-year-old natural resource specialist, filed a traumatic injury claim alleging that on May 18, 2000 his right eye vision impairment was due to "lifting, sneezing, stress or coughing? eye strain on computer? Pending dr's report."

In a report dated May 20, 2000, Dr. Klaus Gierke diagnosed subconjunctival hemorrhage which he opined might be due to injury or straining such as lifting, sneezing or coughing.

By letter dated July 3, 2000, the Office informed appellant that the evidence of record was insufficient to establish his claim and advised him what type of medical and factual evidence was needed to support his claim.

In a July 13, 2000 report, Dr. Lance K. Wozniak, a Board-certified ophthalmologist, diagnosed acute retrobulbar optic neuritis and noted a history of diet-controlled diabetes and "lifelong high myope." Lastly, Dr. Wozniak noted that "[t]ypically retrobulbar optic neuritis is idiopathic, meaning the etiology has never been clearly identified" and opined that he did not "think there is any relationship with any occupational event at this time."

By decision dated August 4, 2000, the Office denied appellant's claim on the grounds that the fact of injury was not established. The Office found insufficient or conflicting evidence of record regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged and that a medical condition resulting from the alleged work incidents or exposures was not supported by the evidence of record.

On August 29, 2000 appellant requested reconsideration of the denial of his claim and submitted reports from Dr. William S. Masland, an attending Board-certified psychiatrist and

neurologist, and Dr. Patricia Gabriel, an attending physician. In a June 29, 2000 report, Dr. Masland noted that appellant had a high degree of myopia and that "only time will tell whether this is an isolated event or whether he falls in the 50 or so percentage of optic neuritis that progress to multiple sclerosis." Dr. Gabriel, in a report dated August 17, 2000, noted the history of the injury, which had been diagnosed as optic neuritis.

By nonmerit decision dated September 22, 2000, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was immaterial and insufficient to warrant a merit review.

The Board finds that appellant has not met his burden of proof in establishing that she sustained an injury in the performance of duty on May 18, 2000.

A claimant seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.[2]

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 the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.[3] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[5] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.[6]

In this case, while appellant alleged that he sustained a traumatic injury[7] to his right eye on May 28, 2000 using a computer, he did not provide any specific details regarding the incident

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[4] *Id.*

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

[6] *Id.*

[7] A "*traumatic injury*" is defined as "a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift." The condition "must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected." 20 C.F.R. § 10.5(ee).

or events that purportedly caused his injury. Appellant indicated that the cause of injury was "lifting, sneezing, stress or coughing? eye strain on computer? Pending dr's report." When the Office later requested that appellant describe in detail exactly how the injury occurred, he failed to provided such information.

The fact that the etiology of a disease or condition is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship.[8]

The medical evidence accompanying appellant's claim is of little probative value in determining the cause of his injury. The record contains no medical opinion attributing appellant's condition to any employment factor. In fact, Dr. Wozniak specifically stated that he did not think there was any relationship to appellant's employment and Dr. Gierke opined that appellant's subconjunctival hemorrhage might be due to injury or straining such as lifting, sneezing or coughing. Thus, the record contains no evidence, either medical or factual, indicating that appellant sustained an employment-related injury. The record on appeal is clearly insufficient to establish "fact of injury."[9] Accordingly, appellant has failed to demonstrate that he sustained an injury in the performance of duty on May 18, 2000.

Next, the Board finds that the Office acted within its discretion in denying appellant's request of merit review.

Under section 8128(a) of the Act,[10] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[11] which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or

[8] *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

[9] In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. *Elaine Pendleton, supra* note 2. The second component is whether the employment incident caused a personal injury. *John J. Carlone*, 41 ECAB 354 (1989).

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b) (1999).

"(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[12]

In this case, the Office denied review of appellant's claim on the grounds that the evidence submitted was immaterial on whether appellant's condition was employment related and thus was insufficient to warrant review. To obtain a merit review, appellant was required to submit medical evidence establishing a causal relationship between his optic neuritis and employment factors.

Appellant's August 29, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration of the August 4, 2000 decision, appellant submitted a June 29, 2000 report by Dr. Masland and an August 17, 2000 report by Dr. Gabriel. Neither physician provided an opinion establishing a causal relationship between appellant's optic neuritis and his employment. In fact, Dr. Masland opined that "only time will tell whether this is an isolated event, or whether he falls in the 50 or so percentage of optic neuritis that progress to multiple sclerosis." Consequently, this evidence is not sufficient to warrant reopening the record for merit review.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

[12] 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated September 22 and August 4, 2000 are hereby affirmed.

Dated, Washington, DC
September 21, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member