U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROLAND E. GAGNON and U.S. POSTAL SERVICE,
POST OFFICE, Nashua, NH

Docket No. 02-743; Submitted on the Record;
Issued September 24, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

On July 24, 2000 appellant, a 55-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a herniated disc in his neck as a result of his federal employment. He attributed his condition to "years of [p]ostal duties and several on the job head injuries." In a separate statement dated July 21, 2000, appellant explained that he was out of work from February 12 to May 27, 2000 due to surgery for his herniated cervical disc. He further stated that he reviewed his personnel file and found documentation regarding six employment injuries he sustained during the period July 11, 1973 through April 25, 1998.[1] Appellant provided this information to his surgeon, who concluded that appellant's current condition was related to the five traumatic head injuries he sustained in 1973, 1982, 1985, 1986 and 1998.

By decision dated November 21, 2000, the Office denied appellant's claim on the basis that he failed to establish a causal relationship between his claimed condition and his employment.

Appellant requested a review of the written record and in a decision dated May 30, 2001, the Office hearing representative modified and affirmed the Office's November 21, 2000 decision. The hearing representative explained that prior claims had not been filed with regard to the majority of appellant's alleged head injuries. Additionally, he noted that the only claim addressed by the Office pertained to an April 1998 employment-related injury, which the Office denied. As the Office had not accepted that appellant sustained a series of traumatic head injuries between 1973 and 1998, the hearing representative found that appellant failed to establish a factual basis for the instant claim. Consequently, the hearing representative modified

[1] Five of the reported injuries involved incidents where appellant allegedly bumped his head while working. The sixth injury pertained to an April 10, 1998 complaint of neck pain, which was identified as arthritis in the neck from years of working.

the November 21, 2000 decision to reflect a denial of compensation based upon appellant's failure to establish fact of injury.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 under the Act, that an injury was sustained in the performance of duty and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.[3] 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.[4]

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated May 30, 2001, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Appellant subsequently requested reconsideration on August 25, 2001. In a decision dated November 30, 2001, the Office denied appellant's request without reaching the merits of his claim.

The Board finds the Office properly denied appellant's August 25, 2001 request for reconsideration.

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.[5] 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.[6]

Appellant's August 25, 2001 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). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted an August 17, 2001 opinion from his chiropractor, Dr. Bruce Hulslander. According to Dr. Hulslander, appellant presented on June 7, 2001 with complaints

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[5] 20 C.F.R. § 10.606(b)(2) (1999).

[6] 20 C.F.R. § 10.608(b) (1999).

of cervical, bilateral shoulder and low back pain. He further indicated that appellant provided a history of complaints of cervical and shoulder pain since 1998, when he struck his head on an overhang covering mailboxes. Dr. Hulslander stated that appellant's treatment consisted of spinal manipulation, ultrasound and electric muscle stimulation. He further stated that there was a definite causal relationship between appellant's 1998 injury and his current symptomatology. As a chiropractor, Dr. Hulslander is not considered a "physician" under the Act.[7] Therefore, his opinion lacks probative value and is insufficient to warrant reopening the claim. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).[8]

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's August 25, 2001 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated November 30 and May 31, 2001 are hereby affirmed.

Dated, Washington, DC
September 24, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[7] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term "'physician' includes chiropractors 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…." 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986). Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence. *Kathryn Haggerty*, 45 ECAB 383 (1994). Dr. Hulslander's August 17, 2001 report does not include a diagnosis of subluxation. Accordingly, his diagnosis and opinion regarding causal relationship is of no probative value, as he is not considered a physician under the Act.

[8] On reconsideration, appellant also submitted additional copies of documents previously of record. Evidence that 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 the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).