

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUSSELL L. HAAG and SOCIAL SECURITY ADMINISTRATION,  
HUMAN RESOURCES CENTER, Lakewood, CA

*Docket No. 03-815 Submitted on the Record;  
Issued June 10, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he developed chickenpox due to exposure in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On June 10, 2002 appellant, a 37-year-old claims representative, filed a claim alleging that he contracted chickenpox as a result of exposure to an infected coworker. Appellant identified May 22, 2002 as the date his injury occurred. He stopped work on May 24, 2002 and returned to work on June 3, 2002. In support of his claim, appellant submitted medical evidence documenting that he had been diagnosed with and treated for, chickenpox. Appellant also submitted evidence concerning his coworker's May 22, 2002 treatment and subsequent release to return to work effective June 5, 2002.

In a June 13, 2002 statement, Marilyn Hass, appellant's supervisor, confirmed that another employee had also developed chickenpox. Ms. Hass further stated that the other employee did not have any contact with appellant on May 22, 2002. Based on what she described as her own research, Ms. Hass expressed doubt that appellant had contracted chickenpox from a coworker.

By letter dated June 28, 2002, the Office asked appellant to submit additional factual and medical information, including a narrative report from his treating physician containing an opinion as to the causal relationship between appellant's diagnosed condition and his employment. The Office allowed appellant 30 days to respond.

On July 8, 2002 appellant submitted a narrative statement explaining that on May 23, 2002, he and the other employees were informed that one of their coworkers had just been diagnosed with chickenpox and would be off work about a week. Appellant stated that he then became very concerned because he had never had chickenpox and had just started coming down

with a rash. He added that he saw his physician on May 24, 2002 and was told to stay off work for a minimum of 10 days.

In a decision dated August 9, 2002, the Office found the evidence of record insufficient to establish that appellant developed chickenpox causally related to his federal employment. The Office specifically noted that the record contained no medical evidence containing an opinion as to the causal relationship, if any, between appellants diagnosed condition and his employment.

By letter received September 11, 2002, appellant requested reconsideration and submitted additional medical and factual evidence in support of his request.

In a decision dated January 10, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant neither raised substantial legal questions nor included new and relevant evidence and thus, it was insufficient to warrant review of the prior decision.

The Board finds that appellant has not established that he developed chickenpox due to exposure in the course of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that any disability or specific condition, for which compensation is claimed is causally related to his or her employment.<sup>2</sup>

In order to establish that an injury was sustained in the performance of duty, 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>4</sup> Claimant's belief that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). 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. *Victor J. Woodhams*, *supra* note 3. 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 claimant's specific employment factors. *Id.*

<sup>5</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

In this case, it is undisputed that on May 22, 2002 appellant's coworker was diagnosed with chickenpox, that on May 23, 2002 appellant noticed a rash on his trunk and that on May 24, 2002 he too was diagnosed with chickenpox. Therefore, the only issue is whether appellant established that he developed chickenpox as a result of his workplace exposure. As noted above, this component generally can be established only by medical evidence.

The medical evidence submitted by appellant in support of his claim includes a documentation of medical impairment form from Kaiser Permanente, containing a diagnosis of chickenpox and indicating that for a period of 10 days, appellant must refrain from contact with the elderly and with persons who have not been exposed to the disease. In addition, the record contains a treatment note from Kaiser, which is largely illegible. The medical documentation submitted does not specifically address how and when appellant contracted chickenpox. Accordingly, the record is devoid of any medical evidence demonstrating a causal relationship between appellant's diagnosed condition and his alleged employment exposure.

The record also contains a New York State Department of Health Communicable disease fact sheet on chickenpox. While this fact sheet addresses the period and method of contagion, the Board has held that medical texts and excerpts of publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.<sup>6</sup>

By letter dated June 28, 2002, the Office informed appellant of the necessity of submitting rationalized medical evidence to substantiate that he developed chickenpox due to factors of his federal employment. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>7</sup> As appellant failed to submit any medical evidence, which discusses how specific factors of his federal employment caused or contributed to his condition, the Office properly denied his claim.

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

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.<sup>8</sup> Section 10.608(b) provides that when an

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<sup>6</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993).

<sup>7</sup> *Robert G. Morris*, *supra* note 4 (1996).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2) (1999).

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.<sup>9</sup>

In his letter requesting reconsideration, appellant reiterated his belief that the fact that he had never contracted chickenpox as a child, combined with his proximity to the infected employee, established a causal relationship between his case of chickenpox and his workplace. The Board notes, however, that this argument was previously raised by appellant and was considered by the Office in its August 9, 2002 decision. The submission of arguments, which repeat or duplicate evidence already in the case record does not constitute a basis for reopening a case.<sup>10</sup> Therefore, appellant's September 11, 2002 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law, nor advanced 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 further support of his request for reconsideration, appellant submitted a September 5, 2002 statement from Ms. Haas, reiterating that appellant's coworker was diagnosed with chickenpox on May 22, 2002. However, this document simply duplicates Ms. Haas' June 13, 2002 statement, which was previously considered by the Office. Again, the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>11</sup> Additionally, appellant submitted an August 23, 2002 letter from Dr. Michael Seroka, a family physician who stated that on May 24, 2002 appellant presented with symptoms consistent with chickenpox. The physician further stated that appellant was tested and given treatment and medication consistent with chickenpox and was advised to remain off work for 10 days. Dr. Seroka, however, does not address whether there was a causal relationship between appellant's diagnosed condition and his employment. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>12</sup> Consequently, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(2).

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 properly denied appellant's September 11, 2002 request for reconsideration.

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<sup>9</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>10</sup> *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>11</sup> *Id.*

<sup>12</sup> *Linda I. Sprague*, *supra* note 10; *Alton L. Vann*, 48 ECAB 259 (1996).

The decisions of the Office of Workers' Compensation Programs dated January 10, 2003 and August 9, 2002 are hereby affirmed.

Dated, Washington, DC  
June 10, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member