U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN A. PICARD and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Titusville, FL

Docket No. 02-2103; Submitted on the Record; Issued May 5, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issues are: (1) whether appellant established that she sustained a back condition causally related to work factors; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On December 22, 1999 appellant, then a 52-year-old park ranger/interpreter, filed a notice of occupational disease and claim for compensation alleging that she developed sciatica in the performance of duty. She alleged that she attended a computer class paid for by the employing establishment in order to satisfy a job requirement and as a result developed lower back pain after sitting for long periods of time. Appellant also attributed her back pain to having to sit for longer periods of time at her computer at work.

Appellant's supervisor offered the following reply statement:

> "The employee took a computer course of her own volition, which required considerable sitting. Since she was not 'required' to take this computer course, she could have quit at any time. The government did pay for the course, as it was a mutual benefit, however, the employee requested course and it is not a requirement for her job.
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> "Additionally, the employee is not required to sit for long periods at work. Her position as an interpreter is in the field with visitors. On occasions she does sit to use a computer for short amounts of time to produce a one-page monthly schedule and three to four work titles for pictures on bulletin boards."

On a prescription form dated December 16, 1999, Dr. Michael M. Dietch, a Board-certified family practitioner, advised that appellant's work schedule should be modified as prolonged sitting was aggravating her sciatica.

In a December 6, 1999 memorandum, addressed to Bob Newkirk from appellant, it was noted that she sought to take an Adobe training course for improvement of job performance. Appellant stated "This training is to help me produce a better newspaper."

In a letter dated January 13, 2000, the Office notified appellant of the factual and medical evidence required to establish her claim.

In a statement received by the Office on February 22, 2000, appellant stated:

> "I had the critical element of coordinating and publishing the newspaper. My volunteer did it in PageMaker last year. I bought a new home computer and got the program in case something happened to her I could still make my deadline. I could not work the final changes. I identified to my supervisor it was not right to have a critical element that I had no control over and if we were going to continue with the newspaper I would need to get the program at work and the training to do it."

Appellant indicated that her supervisor refused to let her take a computer course in Adobe PageMaker during regular work hours and insisted that she take the course on her own time, but the cost of the course would be paid by the employing establishment. She stated that when she began to have back problems during the course, she was told that if she quit the course, the employing establishment would consider whether she was required to reimburse the government for the cost of the course.

In a decision dated February 22, 2000, the Office denied compensation on the grounds that appellant failed to establish that the claimed factors met the "performance of duty" requirement.[1]

On March 1, 2000 appellant requested reconsideration.

In a decision dated March 8, 2000, the Office denied modification of the it's February 22, 2000 decision.

Appellant subsequently filed an appeal with the Board. In a decision dated October 24, 2001, the Board held that the Office erred by not considering all of the evidence date-stamped as received by the Office on February 22, 2000. The Board vacated the March 8 and February 22, 2000 Office decisions and remanded the case for further consideration on the merits.

On remand, the Office issued a decision dated November 9, 2001, wherein the Office determined that appellant was not entitled to compensation because she failed to allege a compensable work factor.

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[1] On February 22, 2000 the Office received additional evidence from appellant consisting of several memorandums requesting permission to take the Adobe training course and a copy of appellant's performance evaluation. The "Employee Performance Plan and Results Report" describes appellant's job as requiring her to produce a publish an annual park newspaper by compiling and editing submissions from other divisions and then organizing the material into the finished product.

On December 15, 2001 appellant requested reconsideration and submitted additional evidence consisting of 14 tabbed items for the record.

Among the evidence submitted was the following: (1) a report of medical examination dated August 29, 2000 singed by Dr. K.J. Myers, a Board-certified emergency medicine physician, whose handwritten diagnoses and recommendations are illegible; (2) a rehabilitation works form dated October 2, 2000 that included a diagnosis of sciatica and is also signed by Dr. Myers; and (3) a prescription form dated January 18, 2000 from Dr. Dietch prescribing physical therapy for treatment of appellant's sciatica.

Appellant also submitted lengthy personal statements dated January 10 and February 7, 2002 wherein she described the additional duties and paperwork she was required to perform after a colleague left work for a month in June 1999.

In a decision dated April 30, 2002, the Office denied modification of its prior decision. The Office specifically noted that appellant has submitted sufficient probative evidence from which to conclude that she was required to sit at her computer for long periods of time at work in order to complete various employment-related projects, therefore, the Office found that she had alleged a compensable work factor. The Office, however, determined that the medical evidence was insufficient to establish a causal relationship between her alleged work factor and the diagnosed back condition of sciatica.

On June 27, 2002 appellant requested reconsideration and provided copies of a research project entitled "Lessons Learned."

In a July 17, 2002 decision, the Office denied appellant's request for reconsideration on the merits.

Initially, the Board will address the issue of whether appellant alleged a compensable factor of employment with respect to her attendance at the computer class.

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely "arising out of and in the course of employment." In the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place within the time or period of employment; at the place where the employee may reasonably be expected to be in connection with his employment; and while he or she is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto. The Board has recognized that a factor considered in applying the "in the course of employment" standard is whether an injury occurred at a time when the employee may reasonably be said to be engaged in the master's business, even indirectly or where his activities are an inherent or common part of the conditions of his employment.

In this case, the record indicates that appellant undertook to improve her computer skills by taking a computer class at Brevard Community College. Her voluntary decision to attend a computer course was not encouraged by the employing establishment but it did agree to pay the

tuition. The employing establishment, however, refused to allow appellant official time off from work. Despite appellant's allegation to the contrary, the employing establishment did not require appellant to be proficient on the computer as part of her regularly assigned duties. The record indicates that she had the opportunity to send the newsletter work out for publication from an independent source. Her desire to be more proficient on the computer, while of some benefit to the employer, was not a job requirement.[2] Thus, any back injury appellant sustained while sitting for long periods in the computer course would not be in the performance of duty.

Notwithstanding, appellant stated that her back condition was also related to sitting for prolonged periods of time while at work in the office and not just at the computer course. The Office correctly found that the evidence supported appellant's claim that she was required to sit for longer periods of time in her job than stated by the employing establishment. Because appellant properly alleged a compensable work factor, the Office correctly undertook to consider whether appellant's back condition was causally related to her employment.

The Board finds that appellant failed to establish that she sustained a back condition causally related to the identified work factor.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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.[4] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing a causal relationship between the claimed condition or disease and the identified employment factors.[6]

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[2] In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefits is derived or an employment requirement gave rise to the injury. *See Patrick Dunn*, 48 ECAB (1997).

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Arturo A. Adame*, 49 ECAB 421 (1998); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board finds that the medical evidence is insufficient to carry appellant's burden of proof on causal relationship.[7] Although appellant's treating physician, Dr. Dietch, reported her subjective complaints of right leg pain upon prolonged sitting and provided a diagnosis of sciatica, he has not provided a reasoned medical opinion attributing appellant's diagnosed condition to the alleged work factor. Dr. Dietch advised prolonged sitting was aggravating appellant's sciatica in his December 16, 1999 statement, but the physician did not discuss the nature of appellant's work requirements or how sitting would have caused her back condition. Likewise, Dr. Myers' report is insufficient to meet appellant's burden of proof since he did not offer an opinion as to the etiology of her sciatica. In the absence of a reasoned medical opinion addressing the causal relationship between appellant's sciatica and the alleged work factor, the Board must conclude that the Office properly denied compensation.

The Board further finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[8] The regulations provide 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 new evidence not previously considered by the Office.[9] When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. 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.[10] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11] When a claimant fails to meet one of the above standards, the [Office] will deny the application for reconsideration without reopening the case for review on the merits."[12]

In this case, appellant did not establish in her reconsideration request, that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. The evidence submitted on reconsideration was not relevant as it was not medical evidence pertinent to the issue of causal relationship. Because appellant failed to meet the requirements of section 8128, her request for reconsideration on the merits was properly denied.

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[7] Appellant's burden includes presenting rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. *Robert G. Morris*, 48 ECAB 238 (1996).

[8] 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[9] 20 C.F.R. § 10.606(b) (1999).

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

[11] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[12] 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated July 17 and April 30, 2002 are hereby affirmed.

Dated, Washington, DC
May 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member