U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERMAN HOLMES and U.S. POSTAL SERVICE,
POST OFFICE, Inkster, MI

Docket No. 03-223; Submitted on the Record;
Issued May 9, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant sustained low back and shoulder injuries in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in failing to review his claim on the merits.

On November 21, 2001 appellant, then a 46-year-old letter carrier, filed a claim for occupational disease, alleging that his low back and shoulder pain was caused by his employment. Appellant stated that: "[W]hile delivering mail I was attacked by a dog. While trying to protect myself I was kicking the dog and the mailbag was swinging around my neck and shoulder and I began to have pain in my neck and shoulder immediately. Increased since September 26, 2001." Appellant noted that he first became aware of his condition and realized that it was caused by employment on September 28, 2001. The employing establishment noted that appellant had not returned to work since September 26, 2001.[1]

In a report dated September 28, 2001, Dr. Ranjini Pillai, appellant's treating physician and a specialist in internal medicine, stated that appellant's pain began two days ago "while pushing the cart with heavy set of mail." He related that: "[R]ecently, [appellant] was trying to bowl in a baseball game and feels he hurt his right shoulder further as well as some how injuring right knee. Admits that this had also been injured in the past about 5 years ago or more and this is the second real bad episode of knee pain since then."

In a report dated October 1, 2001, Dr. Pillai stated that appellant had muscle strain in the right shoulder, which was aggravated by playing baseball. In a report dated October 25, 2001, Dr. Marnix van Holsbeeck, Board-certified in radiology, read magnetic resonance imaging (MRI) scans of the right shoulder and right knee as normal. In a report dated November 6, 2001,

[1] In a report dated December 17, 2001, the employing establishment noted that the accident occurred on September 28, 2001. However, in a separate section of the report, appellant stated that it occurred on September 26, 2001.

Dr. Mark C. Diamond, Board-certified in radiology, read a spinal MRI scan as normal. In a report also dated November 6, 2001, Dr. Dorothy White, appellant's internist, stated that he sustained cervical radiculopathy and was unable to work.

By letter dated December 14, 2001, the Office advised appellant that the information he had submitted was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to his condition including copies of all treatment notes and test results related to his claimed condition and a comprehensive medical report from his treating physician, which describes his symptoms and the physician's opinion, with medical reasons, of the cause of his condition.

In a narrative dated January 2, 2002, appellant stated that he was attacked by a dog in 1995. He then stated that he was "using a cart (per [physician's] orders), but it ended up (the push cart) disappearing." On January 10, 2002 appellant related his physical symptoms and attached multiple reports from August 1995 to January 1996 noting his right shoulder condition.

By decision dated March 6, 2002, the Office denied appellant's claim on the grounds that the evidence failed to establish a causal relationship between his condition and his employment.

In an undated letter received by the Office on April 9, 2002, appellant requested reconsideration. In support of his request for reconsideration, appellant submitted an August 19, 1995 report from Dr. Albino Gimenez, appellant's treating physician with a specialty in general surgery, who noted appellant's multiple dog bite wounds. In a report dated March 19, 2002, Dr. White stated that appellant had cervical radiculopathy and was released to return to work on March 20, 2002. In a report dated March 26, 2002, Dr. White stated that appellant was treated following a cervical spine MRI scan, which revealed mild disc bulging at C3-4, C4-5 and C5-6. The physician noted that appellant had a neck injury in 1995 and that he "definitely could have some neck restriction subsequently to that…."

In response to appellant's undated letter, the Office on April 15, 2002, advised appellant to pursue one of the appeal options included in its March 6, 2002 decision.

By letter dated April 23, 2002, appellant requested reconsideration.

By decision dated July 30, 2002, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on or about September 28, 2001.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and 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 was causally related to the employment factors identified by the claimant.[2]

The medical evidence required to establish a causal relationship generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by claimant.[3]

In this case, appellant's evidence consisted of reports from Dr. Pillai, his treating physician, who related a history of injury that was inconsistent with appellant's claim. He noted that appellant's pain began on September 26, 2001 while he was pushing a mail cart with a heavy set of mail. Appellant, on the other hand, alleged that he was attacked by a dog, which caused him to swing his bag around his neck, which caused pain to his neck and shoulder. Dr. Pillai also identified a bowling episode, which appellant alleged to be the cause of his shoulder and knee conditions. The Board has held that medical conclusions based on inaccurate or incomplete histories are of little probative value[4] and thus Dr. Pillai's reports are insufficient to establish appellant's claim. Further, Drs. Diamond and van Holsbeeck read several MRI scans as essentially normal and did not opine a causal relationship between appellant's alleged condition and his employment. Evidence that does not offer an opinion regarding the cause of an appellant's condition is of limited probative value.[5] None of these reports establish causal relationship between appellant's alleged incident on or about September 28, 2001 and his claimed condition. While appellant may well have a cervical neck condition, he has failed to submit medical evidence establishing that he sustained an injury resulting from his employment and has, therefore, failed to carry his burden of proof.[6]

Further, the Board finds that the Office properly denied merit review of its July 30, 2002 decision.

[2] *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002).

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

[4] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

[5] *Willie M. Miller*, 53 ECAB ____ (Docket No. 02-328, issued July 25, 2002).

[6] Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue, which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may--
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[7]

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (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) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[8]

Appellant's evidence on reconsideration consisted of a 1995 report from Dr. Gimenez and March 2002 reports from Dr. White. The Office initially received Dr. Gimenez' report on January 25, 2002 and considered it in its March 6, 2002 decision denying benefits. The Board has held that 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.[9] Dr. White's March 19, 2002 report, noted cervical radiculopathy but did not establish a causal relationship between this condition and his employment. Her March 26, 2002 report noted recent MRI scan findings, but likewise did not establish a causal relationship between appellant's condition and employment. These reports do not contain a rationale on causal relationship and thus are not dispositive of appellant's claim. Consequently, they are insufficient to require the Office to reopen appellant's claim for merit review.[10] In its July 30, 2002 decision, the Office correctly noted that appellant did not provide any new and relevant evidence or raise any substantive legal arguments not previously considered sufficient to warrant a merit review. Appellant also did not argue that the Office erroneously applied or interpreted a point of law. Consequently, appellant is not entitled to a merit review of the merits of the claim based upon any of the requirements under 20 C.F.R. § 10.606(b)(2). Accordingly, the Board finds that the Office acted within its discretion in denying appellant's request for reconsideration.

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[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.608(b) (1999).

[9] *Arlesa Gibbs*, 53 ECAB ____ (Docket No. 01-113, issued November 2, 2001).

[10] *John E. Watson*, 44 ECAB 612, 614 (1993).

The decisions of the Office of Workers' Compensation Programs dated July 30 and March 6, 2002 are hereby affirmed.[11]

Dated, Washington, DC
May 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[11] The Board notes that this case record contains evidence, which was submitted subsequent to the Office's July 30, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).