U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of RONALD P. HINKLE and DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUND, Aberdeen, Md.

*Docket No. 97-91; Submitted on the Record;*
*Issued December 11, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury as alleged while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of his claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On September 28, 1995 appellant, then a 38-year-old physical scientist, filed a traumatic injury claim alleging that he sustained abrasions to his shoulders and discomfort in his forehead and nose when he tripped and fell in a hallway at work. Appellant stopped work. By decision dated June 19, 1996, the Office denied appellant's claim on the grounds that fact of injury was not established as the medical evidence did not demonstrate that there was any medical condition that resulted from the accepted incident. In a decision dated July 16, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to reopen the record for merit review.

The Board has fully reviewed the case record on appeal and finds that the case is not in posture for decision.

A person who claims benefits under the Act[1] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[2] In order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a)

employee actually experienced the employment incident or exposure which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the present case, the Office accepted that the September 28, 1995 incident occurred in the time, place and in the manner alleged. However, the Office further found that the medical evidence did not establish that there was any medical condition which arose from the accepted incident.[7] Appellant submitted a report dated October 27, 1995 by Dr. Lingling Cheng, a general practitioner, who noted the history of injury and that appellant was currently enrolled in a rehabilitation program for exacerbation of his spinal cord. In a report dated March 26, 1996, Dr. Cheng noted a history of appellant falling at work on September 28, 1995 and diagnosed quadriparesis and a worsening of the spinal cord disorder after appellant's fall. He physician also indicated that a spinal cord contusion needed to be ruled out and that appellant had weakness in the upper extremities after the fall compared to his baseline. In a report dated September 28, 1995, Dr. Joseph Twanmoh, who is Board-certified in emergency medicine, diagnosed upper body weakness. He also noted that appellant has a history of spinal tumor surgery that caused residual weakness and that appellant used canes and braces to walk. Dr. Twanmoh reported that appellant had bilateral weakness in his arms and legs but his baseline condition was unknown. Neither report by Dr. Cheng is sufficient to meet appellant's burden of proof in establishing a medical condition that was due to the accepted trauma as Dr. Cheng does not specifically address whether there is a causal nexus between the diagnosed conditions and the history of injury and does not provide any rationale for his conclusion that appellant's spinal cord disorder worsened after the fall. Thus, his reports are not rationalized and are not sufficient to discharge appellant's burden of proof. Similarly, Dr. Twanmoh has not indicated that the diagnosed condition of upper bilateral weakness is due to the accepted fall and has implied that he is not able to determine whether there had been an aggravation or exacerbation of appellant's preexisting condition since the physician did not have appellant's baseline condition. Appellant

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

[4] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury"defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

[7] The record also contains numerous medical reports that were submitted by appellant subsequent to the issuance of the Office's decision denying merit review. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. 20 C.F.R. § 501.2(c)

has not discharged his burden of proof in establishing that the diagnosed medical conditions are causally related to the accepted trauma.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[8] 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] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[10]

With his request for reconsideration appellant submitted additional medical records from his emergency room visit and hospitalization after the September 28, 1995 fall. In an emergency room report dated September 28, 1995, the emergency room physician provided a history of appellant undergoing a C1 to C7 laminectomy and fusion four years prior, using a crutch to walk and falling that day. He noted "? increased [upper extremity] weakness. No complaint of pain." The physician also indicated that there was no evidence of an acute injury and that appellant's neurological examination was near baseline according to him. The doctor who reviewed the September 29, 1995 magnetic resonance imaging scan of appellant's cervical spine indicated that it was unchanged since the previous examination performed May 13, 1995. Appellant also submitted the October 5, 1995 discharge summary from his hospitalization at Johns Hopkins Hospital. His attending physician, Dr. Henry Brem, a Board-certified neurosurgeon, reported the following:

> "[Appellant] did well until September 28, 1995 when he sustained a fall while at work experiencing a new sudden increase in upper extremity weakness; however, the patient also reported a gradual decline in upper strength over the past year…. [Appellant] has been evaluated extensively by both physical therapy and occupational therapy. He will be discharged on October 5, 1995 to Good Samaritan Rehabilitation Hospital for further inpatient rehabilitation."

Based on the Johns Hopkins Hospital records, including the aforementioned discharge summary, the Board finds that appellant submitted sufficient new evidence with his request for reconsideration to warrant further development of his case. The discharge summary in conjunction with the physical therapy notes and nurses notes provides support that subsequent to appellant's accepted fall on September 28, 1995, he was unable to either return to work or to go

[8] 20 C.F.R. § 10.138(b)(2).

[9] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[10] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

home due to an increase in upper extremity weakness. Given the absence of evidence to the contrary, there is an uncontroverted inference of causal relationship.[11]

On remand, the Office should further develop the medical evidence as appropriate for an opinion on whether appellant's medical condition is causally related to factors of his federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued on the merits of the claim.

The decisions of the Office of Workers' Compensation Programs dated July 16 and June 19, 1996 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
December 11, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] *John L. Carlone*, 41 ECAB 354 (1989).