U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBIE SILVIA ESPINOZA and U.S. POSTAL SERVICE, POST OFFICE, Albuquerque, N.M.

Docket No. 97-115; Submitted on the Record;
Issued October 14, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty prior to March 14, 1996; and (2) whether the refusal of the Office of Workers' Compensation Programs' to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On April 19, 1996 appellant, then a 36-year-old clerk, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that use of a newly installed keyboard aggravated her condition causing pain in her arm, elbow and wrist. Appellant explained that the delay in filing this claim was because she had initially filled out the wrong form. Appellant also indicated that she first became aware of her illness or disease and reported her condition to her supervisor on May 9, 1995; that she first realized her disease or illness was caused or aggravated by her federal employment on March 4, 1996; and first sought medical treatment for this disease or illness on April 10, 1996. The employing establishment had initially controverted appellant's claim; however, in a subsequent letter dated May 31, 1996, the employing establishment indicated that its knowledge of the claimed injury was in agreement with the statements made by appellant.

In a letter dated May 20, 1996, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such. The Office specifically requested that appellant submit a physician's reasoned opinion describing her symptoms, results of examinations and tests, diagnosis, and the treatment provided, with medical reasons, on the cause of her condition. The Office moreover noted that if employment factors contributed to her condition, an explanation of how such exposure contributed to the condition should be provided. Appellant was allotted 30 days within which to submit the requested evidence.

By letter dated June 3, 1996, appellant responded to the Office's May 20, 1996 letter by informing the Office that she had requested that her medical records be sent to the Office.[1] However, no medical evidence of any kind was submitted to support appellant's claim.

In a decision dated June 20, 1996, the Office rejected appellant's claim finding that the evidence of record failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office found that, while the evidence of file supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, a medical condition resulting from the exposure was not supported by the medical evidence of file. The Office also noted that appellant was advised of the deficiency in her claim on May 20, 1996 and afforded an opportunity to provide supportive evidence; however, medical evidence to support the fact that appellant sustained an injury in the performance of duty prior to March 14, 1996 was not received.

By letter dated June 28, 1996, appellant requested reconsideration of the Office's June 20, 1996 decision and indicated that the physician for the employing establishment had difficulty locating her medical records because it had been transferred to the "Professional Offices." Appellant then indicated that the record had finally been located and would be mailed to the Office on that day, June 28, 1996.

In a letter decision dated July 10, 1996, the Office denied appellant's request for reconsideration finding that her June 28, 1996 letter was insufficient to warrant a review of the June 20, 1996 decision, because it neither raised substantive legal questions, nor was it accompanied by new and relevant evidence.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty prior to March 14, 1996.

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.[3]

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 that the employment factors identified by the claimant were the proximate cause of the condition for

[1] The employing establishment forwarded to the Office a copy of appellant's "ETC report for the time period from January 6 through March 15, 1996," indicating the approximate period of time appellant was exposed to the keyboard. However, this information is not relevant to the main issue in this case and will not be considered.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] 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 the 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,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

In the present case, it is not disputed that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, a medical condition resulting the exposure was not supported by the medical evidence of file. The record contains no rationalized medical opinion evidence to establish that appellant sustained an injury in the performance of duty prior to March 14, 1996. The only evidence submitted by appellant was her own statement of why she believed the accepted employment factors caused or contributed to her alleged condition. There was no diagnosis presented and no medical evidence submitted.

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[9] or that work activities produce symptoms revelatory of an underlying condition[10] does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[11] As appellant has not submitted rationalized medical evidence providing a diagnosis, a history of injury, or an explanation of how and why her alleged condition or illness was caused or aggravated by her federal employment prior to March 14, 1996, the Office properly denied appellant's claim for compensation.

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[4] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *William Nimitz, Jr.*, *supra* note 6.

[10] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[11] *Victor J. Woodhams*, *supra* note 4.

The Board further finds that the refusal of the Office in its July 10, 1996 decision on reconsideration to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a) of the Act did not constitute an abuse of discretion.[12]

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wished the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(ii) Advancing a point of law or fact not previously considered by the Office; or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office." [13]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[14] 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.[15]

Appellant has neither shown that the Office erroneously applied or interpreted a point of law, nor has she advanced a point of law or fact not previously considered by the Office, nor has she submitted relevant and pertinent evidence not previously considered by the Office. Appellant's June 28, 1996 letter advising that medical evidence was forthcoming was not relevant or pertinent to the main issue presented on appeal, *i.e.,* whether appellant's alleged condition was the result of the above-mentioned accepted employment factors. Evidence which is not relevant to the pertinent issue of a case does not require reopening a case for a merit review.[16] Appellant failed to raise substantive legal questions, and/or provide new and relevant evidence to warrant a merit review of the Office's decision. Therefore, as appellant's requests for reconsideration failed to meet at least one of the three requirements for obtaining a merit review of this case, the Board finds that the Office's refusal to reopen the case for a merit review did not constitute an abuse of discretion.

[12] Section 8128(a) provides in relevant part: "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

[13] 20 C.F.R. § 10.138(b)(1).

[14] 20 C.F.R. § 10.138(b)(2).

[15] *See Eugene F. Butler,* 36 ECAB 393 (1984).

[16] *See James E. Salvatore,* 43 ECAB 309 (1991); *Edward Matthew Diekemper,* 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated July 10 and June 20, 1996 are affirmed.

Dated, Washington, D.C.
October 14, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member