

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IROSE R. ADAMS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, NJ

Docket No. 99-172; Submitted on the Record;
Issued April 24, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant established that she sustained a leg condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review under 5 U.S.C. § 8128.

On July 31, 1996 appellant, then a 50-year-old licensed practical nurse, filed an occupational disease claim alleging that she developed chronic venous insufficiency, phlebitis and deep vein thrombosis as a result of having to stand and walk for long periods of time in her federal employment. She stopped work on April 1, 1996 and has not returned.

By letter dated October 1, 1996, the Office notified appellant that she was required to submit rationalized medical evidence in support of her claim.

In a report dated February 6, 1997, Dr. James T. Cort, a Board-certified internist, noted that appellant was first treated by him on June 3, 1993 for a pulmonary embolus, osteoarthritis, obesity and hypertension. He noted that appellant had a history of pulmonary embolus diagnosed in February 1979 and again in July 1983, at which time she presented with left calf pain. Dr. Cort reported that appellant was admitted to the hospital in February 1996 and was discharged with a diagnosis of possible deep vein thrombosis, varicose veins and post-phlebotic syndrome. He indicated that appellant still complained of recurrent pain in both legs and that she was unable to work as a nurse because the job required prolonged standing, lifting and pushing. Dr. Cort further concluded that the "the nature of [appellant's] occupation adversely affects her condition and prolonged standing contributes towards her chronic leg pain and chronic leg edema."

In a decision dated March 12, 1997, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record was insufficient to establish that appellant's leg condition was causally related to or aggravated by factors of her employment.

On March 17, 1997 appellant, by counsel, requested a hearing.

At the hearing held on October 27, 1997, appellant submitted medical records dating from 1977 to 1992 which noted that she had a history of pulmonary embolism associated with left leg phlebitis. Appellant also submitted medical records pertaining to her hospitalization in February 1996 and office notes from Dr. Leon S. Dick, indicating that appellant was treated for left calf pain on March 5 and 21 and May 2, 1996. Dr. Dick's notes included diagnoses of chronic venous insufficiency and varicose veins, but there was no discussion as to the etiology of appellant's condition.

In a decision dated December 18, 1997, an Office hearing representative affirmed the Office's March 12, 1997 decision.

By letter dated March 20, 1998, appellant filed a request for reconsideration and resubmitted copies of the office notes from Dr. Dick.

In a decision dated June 18, 1998, the Office denied appellant's request for a merit review because the evidence submitted on reconsideration was duplicative.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a leg condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 a 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 employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Victor J. Woodhams*, *supra* note 3.

The medical evidence required to establish causation, 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 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, 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 employment factors identified by claimant.⁵

In the instant case, the Office denied appellant's claim on the grounds that appellant failed to submit a rationalized medical opinion to establish the causal relationship between her alleged leg condition and factors of her federal employment. Although appellant relies on a February 6, 1997 report by Dr. Cort, the Board notes that the physician did not provide a clear diagnosis of appellant's leg condition other than to note her history of chronic leg pain and that she was treated by him for hypertension, arthritis and an enlarged heart. He notes that appellant was treated by Dr. Dick for leg edema and he opined that prolonged standing in appellant's nursing job would aggravate that condition, but he does not elaborate on the etiology of appellant's leg edema or provide a rationale for his conclusions. Because the record indicates that appellant has been diagnosed with obesity and numerous nonwork-related conditions such as a history of pulmonary embolus, there is some suggestion that her leg symptoms are not work related. Such a conclusion is buttressed by the fact that appellant continued to complain to Dr. Cort of leg pain almost nine months after she stopped work on April 1, 1996. In the absence of a rationalized medical opinion establishing either that appellant's leg condition was causally related to or aggravated by factors of her federal employment, the Office properly denied compensation.

The Board also finds that the Office properly denied appellant's request for a merit review under section 8128.

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁶ 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 point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ 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.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening

⁵ *Id.*

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

⁷ 20 C.F.R. § 10.138(b)(1).

⁸ 20 C.F.R. § 10.138(b)(2).

a case.⁹ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹⁰ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.¹¹

In conjunction with her reconsideration request, appellant submitted duplicate copies of evidence already of record. She did not submit any new and relevant evidence pertinent to the issue of her case. Because appellant failed to comply with the requirements of section 8128, the Office acted within its discretion in denying her request for a merit review.

The decisions of the Office of Workers' Compensation Programs dated June 18, 1998 and December 18, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 24, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁰ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

¹¹ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).