

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID J. GONNER and DEPARTMENT OF AGRICULTURE,  
MEAT POULTRY INSPECTION SERVICE, Des Moines, IA

*Docket No. 99-1557; Submitted on the Record;  
Issued August 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof to establish that his alleged bilateral osteoarthritic knee condition was sustained in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

The present case was before the Board on a prior occasion. Appellant, a 54-year-old food inspector, alleged that he twisted his right knee while climbing a ladder on June 17, 1992. He filed a claim for benefits on August 6 and September 10, 1992, alleging that he sustained an injury to his right knee in the performance of duty on June 17, 1992. The Office rejected appellant's claim by decisions dated November 4, 1992, October 22 and December 8, 1993, April 29, August 26 and October 29, 1994, March 22, April 24 and September 11, 1995.

By decision dated November 4, 1997, the Board reversed the Office decision finding that it had abused its discretion in refusing to consider new and relevant evidence. The Board therefore remanded for a determination of appellant's claim on the merits.<sup>1</sup>

By decision dated November 24, 1997, the Office denied modification of its prior decisions.

On December 22, 1997 appellant filed a Form CA-2 claim for benefits, alleging that he had sustained a bilateral osteoarthritic knee condition causally related to factors of his employment and that he first became aware of this condition in June 1992.

By decision dated March 20, 1998, the Office denied appellant's claim on the grounds that he did not submit evidence sufficient to establish that the claimed condition was causally related to factors or incidents of employment.

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<sup>1</sup> Docket No. 96-232.

By letter dated May 18, 1998, appellant requested reconsideration of the March 20, 1998 Office decision. In support of his claim, appellant submitted reports dated July 1, August 8, 1993 and a March 17, 1998 report and x-ray report from Dr. Charles H. Morrow, a Board-certified orthopedic surgeon. In his July 1, 1993 report, Dr. Morrow noted complaints of bilateral knee pain and diagnosed bilateral osteoarthritis of the knees. He advised in his August 5, 1993 report that appellant had rather moderate arthritis in his right knee with pain disproportionate to the radiographic findings. In his March 17, 1998 report, Dr. Morrow stated:

“[Appellant] returns reporting that both knees are now giving him a lot of trouble. His ambulation tolerance is only a block or two. His awakened a lot at night. Medications do not help. He feels significantly disabled and would like to proceed with bilateral total knee arthroplasties. His general health is good.... [On physical examination] he has valgus alignment on the left, varus on the right. He has significant pain with stability testing and guards this but I do not detect any collateral instability on either side.”

Dr. Morrow opined that appellant had end stage osteoarthritic knees bilaterally with symptoms and radiographic findings warranting total knee arthroplasty.

By decision dated August 18, 1998, the Office denied reconsideration, finding that appellant did not submit evidence sufficient to warrant modification.<sup>2</sup>

By letter dated November 19, 1998, appellant’s attorney requested reconsideration. In support of his claim, he submitted appellant’s deposition dated November 18, 1998.

By decision dated February 19, 1999, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not met his burden of proof to establish that his bilateral osteoarthritic knee condition was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> has the burden of establishing that 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 period 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.<sup>4</sup> These are the

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<sup>2</sup> The Office stated that it was combining appellant’s previous claim for right knee injury, No. 1010415491, with the claim for benefits based on a bilateral knee condition, No. 110162294.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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 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 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. The medical evidence required to establish causal relationship is usually rationalized medical 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 the claimant.<sup>6</sup>

In the present case, the only medical evidence appellant submitted in support of his claim were the medical reports from Dr. Morrow. These reports contain findings on examination and brief, conclusive statements summarily indicating that appellant had a bilateral osteoarthritic knee condition which required surgery, but did not provide a probative, rationalized opinion that his alleged bilateral osteoarthritic knee condition was caused or aggravated by factors, or conditions of his federal employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>7</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. In the instant case, none of the medical reports appellant submitted contain any rationalized medical opinion relating the cause of the alleged condition to factors of his federal employment. The reports are therefore of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.<sup>8</sup> The reports did not explain the process through which factors of appellant's employment would have been competent to cause the claimed bilateral osteoarthritic knee condition.

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<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *See Id.*

<sup>8</sup> *William C. Thomas*, 45 ECAB 591 (1994).

Accordingly, as appellant failed to submit any probative, rationalized medical evidence in support of a causal relationship between his claimed condition and factors or incidents of employment, the Office properly denied appellant's claim for compensation.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his cervical condition claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> 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.<sup>10</sup>

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. All of the medical evidence submitted by appellant was previously of record, and considered by the Office in reaching prior decisions. Thus, his request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant sustained a bilateral osteoarthritic knee condition in the performance of duty -- is medical in nature. Additionally, neither appellant's November 18, 1998 deposition nor his attorney's November 19, 1998 letter showed the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although his attorney generally contended that the claimed bilateral knee condition was caused or aggravated by factors or incidents of his federal employment, he failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

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<sup>9</sup> 20 C.F.R. § 10.607(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>10</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

The decisions of the Office of Workers' Compensation Programs dated February 19, 1999 and August 18, 1998 are hereby affirmed.

Dated, Washington, D.C.  
August 7, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member