

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED HASKIN and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Barstow, CA

*Docket No. 99-1229; Submitted on the Record;
Issued June 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on June 22, 1997 causally related to his June 26, 1992 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for review of the merits of his claim.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability on June 22, 1997 causally related to his June 26, 1992 employment injury.

Appellant, a materials handler, filed a claim on June 28, 1992 alleging that on June 26, 1992 he fractured his left arm in the performance of duty. The Office accepted appellant's claim for fracture of the left humeral head. On March 16, 1998 appellant filed a notice of recurrence of disability alleging on June 22, 1997 that he sustained a recurrence of disability causally related to his accepted employment injury. The Office denied appellant's claim by decision dated July 21, 1998. Appellant requested reconsideration on December 5, 1998 and by decision dated December 21, 1998, the Office declined to reopen appellant's claim for consideration of the merits.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing June 22, 1997 and his June 26, 1992 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

In support of his claim for recurrence of disability, appellant submitted an x-ray report dated June 22, 1997 noting that appellant's left shoulder showed no evidence of fracture or osseous injury. The report found abnormality involving the density of the left humeral head. Appellant submitted hospital records dated June 22, 1997 diagnosing acute arthritis left shoulder. In a report dated June 22, 1997, Dr. David W. Smith, a Board-certified pathologist, noted appellant's complaints of pain in the left shoulder, performed a physical examination and reviewed the x-ray. He diagnosed acute arthritis left shoulder and stated that appellant denied a history of trauma to his shoulder.

Dr. Victor Worth, an employing establishment physician, diagnosed arthritis on March 18, 1998. Dr. Worth noted appellant's history of employment injury in 1992 and diagnosed "old humeral head fracture with arthritis-like pain."

Appellant has failed to submit a physician's opinion on the causal relationship between his current condition of arthritis and his accepted employment injury of fracture of the left humeral head. Dr. Worth is the only physician to include a history of injury to the left arm and he did not provide any statement that he believed that appellant's current condition was causally related to the accepted employment injury.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

Appellant requested reconsideration of the Office's July 21, 1998 decision on December 5, 1998. He did not submit new evidence but argued that he was unable to secure the additional medical evidence needed as he lacked the necessary funds. The Office declined to reopen his claim for reviewing of the merits on December 21, 1998.

Section 10.138(b)(1) of the Code of Federal Regulations provides 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.³ 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

Appellant failed to submit a point of law or fact not previously considered by the Office and failed to submit relevant new evidence. He alleged that he advanced a point of law, that he was unable to secure the necessary medical evidence as he could not afford to pay the medical expense that this would entail. The Board finds that this statement is not sufficient to require the Office to reopen appellant's claim for review of the merits. The Office informed appellant that he needed a narrative report from a physician noting his history of employment injury on June 26, 1992 and providing an opinion with medical reasoning of how that injury caused or contributed to appellant's current diagnosed condition of arthritis of the left shoulder in order to

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

establish his claim. Appellant failed to submit relevant new medical evidence, or new legal argument in support of his request for reconsideration and the Office properly declined to reopen his claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated December 21 and July 21, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member