

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS WAYNE MELVIN and U.S. POSTAL SERVICE,
POST OFFICE, West Plains, MO

*Docket No. 02-1175; Submitted on the Record
Issued September 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his right leg condition was causally related to work factors; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

Appellant's claim filed on January 6, 1999 was accepted for a sprain after appellant, then a 50-year-old carrier, turned his right ankle on some ice while delivering mail the previous day. He accepted a limited-duty position on March 19, 1999 and returned to part-time work. On June 28, 1999 Dr. Charles C. Mauldin, Board-certified in emergency medicine and a second opinion physician to whom the Office had referred appellant, released him to full duty.

On August 12, 1999 appellant filed a recurrence of disability claim, alleging that his right leg continued to hurt "terrible." The employing establishment controverted the claim and the Office denied it on September 21, 1999 on the grounds that appellant had submitted no medical evidence showing that his leg pain was causally related to the accepted ankle sprain.

On August 16, 2000 appellant filed a second recurrence of disability claim, stating that since he returned to full duty in July 1999 he continued to have pain in his lower back and right leg from the knee to the ankle. Appellant added that he "wrenched" his back and "twisted" his right knee and ankle when he stepped on "a rock or stick in the street" on April 5, 2000. The employing establishment also controverted this claim.

On October 20, 2000 the Office informed appellant that his claim would be considered a new traumatic injury and requested additional factual and medical information. On December 18, 2000 the Office denied the claim on the grounds that the medical evidence failed to establish a causal relationship between appellant's leg and back condition and the April 5, 2000 incident.

Appellant requested a written review of the record and the hearing representative found on June 15, 2001 that appellant had failed to meet his burden of proof in establishing that his right ankle condition was causally related to the April 5, 2000 incident.

By letter dated January 25, 2002, appellant requested reconsideration and submitted copies of evidence that he believed were pertinent to his case. The Office denied his reconsideration request on February 21, 2002 on the grounds that the evidence submitted was insufficient to warrant reopening his claim.

The Board finds that appellant has failed to meet his burden of proof in establishing that his right leg condition was causally related to the April 5, 2000 work incident.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim,² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable limitation period of the Act,⁴ that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury.⁵ These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, "fact of injury" must first be established.⁷ The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.¹⁰

¹ 5 U.S.C. §§ 8101-8193.

² *Irene St. John*, 50 ECAB 521, 522 (1999).

³ *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

⁴ *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

⁵ *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Ruth Seuell*, 48 ECAB 188, 192 (1996).

⁷ *Neal C. Evins*, 48 ECAB 252 (1996).

⁸ *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

⁹ See 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee)(1999)(defining injury).

¹⁰ *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

Causal relationship is a medical issue¹¹ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹² 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.¹³

The Board finds that the medical evidence fails to establish that appellant's right leg condition was causally related to the April 5, 2000 incident at work. Dr. Rick B. Walker, an osteopathic practitioner to whom appellant was referred by his treating physician, examined appellant on May 3, 2000 and found no leg swelling. He reviewed diagnostic testing -- a benign bone scan, negative x-rays and a normal magnetic resonance imaging (MRI) scan -- and found right leg radiculopathy of questionable etiology.

In follow-up visits on May 17, June 16 and July 26, 2000, Dr. Walker discussed the possibility of a fascial hernia on appellant's tibia and the need for vascular and neurological consultations. In none of his reports did Dr. Walker opine that appellant's leg condition was due to work factors. In fact, he was unable to find a specific cause of appellant's reported leg pain.¹⁴ Therefore, Dr. Walker's reports are insufficient to establish the required nexus between appellant's leg condition and the April 5, 2000 incident.¹⁵

Dr. Bruce D. Robbins, a Board-certified neurologist, evaluated appellant on January 31, 2000, noting his complaints of right leg pain and reported a nerve conduction study of the right leg as "pretty much within normal limits." In follow-up reports dated March 7, April 18, June 19, July 17 and August 24, 2000, Dr. Robbins noted appellant's complaints of pain, two "unremarkable" MRI scans of his right leg, a recommendation for weight loss and appellant's work status. However, neither he nor his colleague, Dr. Thomas Knox, discussed the etiology of appellant's leg condition.¹⁶

Dr. John F. Ferguson, a Board-certified neurosurgeon, diagnosed mild degenerative lumbar spondylosis with disc bulging at L5-S1 on September 12, 2000, but found no spinal pathology that would account for appellant's complaints of knee and ankle pain. He reported an

¹¹ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹² *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹³ *Gary L. Fowler*, 45 ECAB 365, (1994).

¹⁴ Dr. Walker noted on May 3, 2000 that appellant's right leg pain was nonwork related.

¹⁵ *See Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (the mere fact that a condition manifests itself during a period of employment does not raise an inference that the condition is causally related to work factors).

¹⁶ Dr. Robbins released appellant to full-time work without restrictions on November 9, 2000. Appellant returned to work on December 8, 2000.

essentially normal neurological examination. Dr. Charles W. Dunn, a Board-certified surgeon, examined appellant on July 10, 2000 and was “unable to determine the etiology of his leg pain.”

Dr. Christoffer J. Weber, Board-certified in physical medicine and rehabilitation, examined appellant on October 11, 2000. He released appellant to full-time work on November 2, 2000 with no more than six hours of walking a day. In none of his reports did he discuss any causal nexus between the April 5, 2000 twisting incident and appellant’s right leg condition.

Appellant was informed of the need for a rationalized medical opinion linking his right leg condition to the April 5, 2000 incident, but failed to provide the required medical evidence to establish the requisite causal relationship. Therefore, he failed to meet his burden of proof and the Office properly denied his claim.¹⁷

The Board also finds that the Office acted within its discretion in refusing to reopen appellant’s claim for a merit review.

Section 8128(a) of the Federal Employees’ Compensation Act¹⁸ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹⁹

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).²⁰ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.²¹ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.²²

With his request for reconsideration, appellant submitted copies of a December 5, 2000 note instructing him not to return to work until his restrictions were lifted; part of an August 22,

¹⁷ See *Judith J. Montage*, 48 ECAB 292, 295 (1997) (finding that the fact that the etiology of a disease or condition is obscure does not shift the burden of proof to the Office to disprove an employment relationship), citing *Lucrecia M. Nielsen*, 42 ECAB 583, 596 (1991).

¹⁸ 5 U.S.C. §§ 8101-8193.

¹⁹ 5 U.S.C. § 8128(a) “(The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).”

²⁰ 20 C.F.R. § 10.608(a) (1999).

²¹ 20 C.F.R. § 10.606(b)(1)-(2).

²² 20 C.F.R. § 10.608(b).

2000 memorandum by his supervisor, describing her discussions with him in April 2000; a medical noted dated May 3, 2000; June 16 and July 26, 2000 reports from Dr. Walker; and a November 2, 2000 report from Dr. Weber.

All of this evidence was in the record and considered by the Office prior to issuing its June 15, 2001 decision denying appellant's claim. Therefore, appellant has failed to submit new evidence pertinent to the issue of causal relationship.²³ Appellant has not advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of the three requirements for reopening his claim for merit review, the Office properly denied his reconsideration request.

The February 21, 2002 and June 15, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
September 25, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

²³ See *Eugene L. Turchin*, 48 ECAB 391, 397 (1997) (finding that appellant's failure to submit new and relevant evidence on reconsideration justified the Office's refusal to reopen his case for a merit review).