U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. ROBINSON and DEPARTMENT OF JUSTICE, OFFICE OF THE U.S. ATTORNEY, San Diego, Calif.

Docket No. 96-864; Submitted on the Record;
Issued February 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a subarachnoid hemorrhage in the performance of duty on March 24, 1994; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has carefully reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a subarachnoid hemorrhage in the performance of duty on March 24, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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.[2] These are the 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 the disease or condition for which compensation is claimed; (2) a

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 a causal relationship 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 the claimant.[4]

In the present case, appellant claimed that he sustained a subarachnoid hemorrhage on March 24, 1994 due to the accumulated stress of performing the duties of a litigation attorney. By decision dated February 9, 1995, the Office denied appellant's claim on the grounds that he did not submit sufficient factual and medical evidence in support of his claim. By decision dated April 17, 1995, the Office denied appellant's request for merit review and by decision dated October 3, 1995, the Office denied modification of its February 9, 1995 decision.

Appellant did not submit adequate medical evidence to establish that he sustained a subarachnoid hemorrhage on March 24, 1994 due to stress at work. Appellant submitted a June 8, 1995 report in which Dr. Lance L. Altenau, an attending Board-certified neurosurgeon stated:

> "It appears that the hemorrhage was at least related in part to the stress of work and to a coughing jag which occurred immediately prior to the onset of symptoms.
>
> "Since a congenital source of the hemorrhage was not identified, it would be my feeling with considerable probability that the hemorrhage was work related."

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its conclusion on causal relationship.[5] Dr. Altenau did not describe the nature of the implicated employment factors or explain the medical process through which stress could have contributed to appellant's subarachnoid hemorrhage. Nor did he explain why appellant's condition was not solely due to some nonwork-related cause such as his "coughing jag." The Board has held that the fact that a condition manifests itself or worsens during a period of employment[6] or that work activities

[4] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[5] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

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

produce symptoms revelatory of an underlying condition[7] does not raise an inference of causal relationship between a claimed condition and employment factors.[8]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[9] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[10] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.[11] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[12]

In support of his reconsideration request, appellant submitted a March 13, 1995 letter in which he asserted that he had submitted sufficient evidence to support his claim and alleged he was disadvantaged by the Office's delay in processing his claim. The submission of this letter did not require reopening of appellant's claim in that the Office had already considered similar documents submitted by appellant. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13]

In the present case, appellant has not established that the Office abused its discretion in its April 17, 1995 decision by denying his request for a review on the merits of its February 9, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

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

[8] Appellant submitted additional evidence after the Office's October 3, 1995 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

[9] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[10] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[11] 20 C.F.R. § 10.138(b)(2).

[12] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[13] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The decisions of the Office of Workers' Compensation Programs dated October 3, April 17 and February 9, 1995 are affirmed.

Dated, Washington, D.C.
February 9, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member