

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD CONSTANCIO and DEPARTMENT OF THE AIR FORCE,
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, Tex.

*Docket No. 96-2646; Submitted on the Record;
Issued September 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; 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 duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained an injury 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 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 factual statement identifying employment factors alleged to have caused or contributed to the

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).

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 alleged that he sustained bilateral anterior ischemic optic neuropathy and hypertension due to stress at work. The Office accepted that appellant sustained stress at work, including stress related to completing the demanding duties of his work as a program analyst.⁵ By decision dated November 22, 1995, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury due to the accepted employment factors and, by decision dated May 22, 1996, the Office affirmed its November 22, 1995 decision.

Appellant has not submitted sufficient medical evidence to establish that he sustained an injury due to exposure to stress at work. In support of his claim, appellant submitted a January 19, 1996 report, in which Dr. Kevin T. Tong, a Board-certified internist for the employing establishment, noted that he sustained acute vision loss, resulting in legal blindness, which was attributed to ischemic retinopathy. Dr. Tong stated, "It is my opinion that a contributing factor to this episode was [appellant's] high levels of stress brought on by his job environment which worsened his hypertension." Dr. Tong indicated that appellant's headaches resolved after he retired and noted, "Admittedly, I cannot prove that stress caused [appellant's] condition, but I feel that the evidence supports this as a major contributing factor."

The submission of Dr. Tong's report is not sufficient to establish appellant's claim in that the report is of limited probative value on the relevant issue of the present case because it does not contain adequate medical rationale in support of its conclusion on causal relationship.⁶ Dr. Tong did not describe the accepted employment factors in any detail or explain the medical process, through which they would have been competent to cause or aggravate the claimed conditions. He did not explain why appellant's medical problems would not have been solely due to nonwork factors. The Office requested that Dr. Tong clarify his opinion on causal

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

⁵ The record reveals that appellant had a heavy work load and his work required him to make sensitive decisions regarding other employees.

⁶ 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).

relationship, but Dr. Tong did not provide any further explanation of his opinion in the April 29, 1996 report he produced in response to the Office's request. Appellant submitted other medical evidence concerning his eye and hypertension conditions, but none of this evidence related his problems to employment factors.

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,⁷ 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.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ 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.¹⁰

In a letter dated November 26, 1995, appellant requested reconsideration of the Office's November 22, 1995 decision. In support of his reconsideration request, appellant submitted additional factual documents regarding his work duties. This evidence is not relevant to the main issue of the present case in that there is no dispute regarding the factual aspects of appellant's claim and the main issue is medical in nature, *i.e.*, whether appellant submitted sufficient medical evidence to establish an employment-related injury. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ Appellant submitted excerpts from medical periodicals, but this evidence is not relevant because the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors.¹² Appellant also submitted a copy of a November 6, 1995 letter, but this letter had already been submitted to the

⁷ 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).

⁸ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁹ 20 C.F.R. § 10.138(b)(2).

¹⁰ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

¹¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹² Such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Office. 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 December 28, 1995 decision, by denying his request for a review on the merits of its November 22, 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.

The decisions of the Office of Workers' Compensation Programs dated May 22, 1996, December 28 and November 22, 1995 are affirmed.

Dated, Washington, D.C.
September 14, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

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