U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. ELY and DEPARTMENT OF THE NAVY, NAVAL SUPPLY CENTER, Oakland, Calif.

Docket No. 97-617; Submitted on the Record;
Issued September 16, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that any disability or treatment for medical conditions after November 13, 1981 was causally related to his accepted October 8, 1981 employment injury of cervical strain; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record for merit review pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On October 8, 1981 appellant, then a 35-year-old supply clerk, filed a notice of traumatic injury and claim, alleging that he injured his neck and head when he walked into a pipe that was sticking out above a ramp on the employing establishment's premises from a fence that had become disconnected. Appellant returned to regular-duty work on October 13, 1981. The Office accepted appellant's claim for cervical strain. On November 30, 1981 appellant filed a claim for recurrence of disability beginning October 30, 1981. On December 7, 1981 appellant filed a second claim for recurrence of disability beginning November 9, 1981 and ending November 13, 1981. These claims were accepted and appellant received appropriate compensation for temporary total disability. There was no further activity in this case until appellant submitted a letter dated May 2, 1996, alleging that "major back and neck surgery" was related to his 1981 injury and the Office erred in terminating his claim based on a finding that he had "Schuermann's Disease." The Office construed this letter as a claim for recurrence of disability. In a decision dated September 25, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that he had not established any residuals of his October 8, 1981 accepted injury.[1] By decision dated October 30, 1996, the Office denied appellant's request for reconsideration on the grounds that it was *prima facie* insufficient to warrant modification of the prior decision.

[1] Appellant had an earlier claim for an on-the-job injury on October 29, 1973. Appellant returned to work on November 5, 1973 and his claim was accepted for back sprain.

The Board finds that appellant has not met his burden of proof in establishing that any disability or medical treatment he received after November 13, 1981 was causally related to his October 1981 employment injury.

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3]

In the present case, appellant submitted a medical report and several x-ray reports he believed supported his claim for recurrence of disability. In a report dated April 12, 1991, Dr. Michael S. Lawrence, a Board-certified neurosurgeon, indicated that he had treated appellant between February 1 and July 19, 1990 while he underwent two operative procedures, a decompressive laminectomy from the T10 through L5 and an anterior cervical discectomy with fusion at the C6 to C7. Dr. Lawrence noted continued residual low back pain with difficulty ambulating and gait instability. He also noted a history of post-traumatic stress disorder which affected appellant's ability to deal with his residual injury. Dr. Lawrence's report is not based on a proper factual foundation as he does not provide a history of injury with the employing establishment. Thus, his report is of limited probative value and cannot establish that appellant's disabilities are causally related to his accepted employment injury.[4] Appellant also submitted x-rays dated May 21, 1992, August 10, 1993, March 11 and August 9, 1994. These x-rays either are of appellant's chest and therefore are not germane to the area of injury in the present case, or they merely confirm that appellant indeed has undergone the previously noted surgical procedures. The reports are not sufficient to discharge appellant's burden of proof since they do not address either his employment history or any disability arising from his accepted injury.[5] Appellant has not established that he sustained a recurrence of disability after November 13, 1981.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent

[2] *John E. Blount*, 30 ECAB 1374 (1979).

[3] *Frances B. Evans*, 32 ECAB 60 (1980).

[4] *James A. Wyrich*, 31 ECAB 1805 (1980).

[5] Appellant also submitted a 1974 report in which the physician provided a diagnosis of Schuermann's disease, a congenital condition. However, as this report predates appellant's alleged date of recurrence it is irrelevant to this case. Moreover, the medical evidence provided is silent as to the existence of this condition and therefore is not sufficient to directly refute whether or not appellant has said condition.

evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.[6] 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.[7] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8] As appellant has not advanced any argument concerning the Office's application of the law and interpretation of the facts and has not submitted any evidence with his request for reconsideration, his request is *prima facie* insufficient to warrant reopening the record.

The decisions of the Office of Workers' Compensation Programs dated October 30 and September 25, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 16, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] 20 C.F.R. § 10.138(b)(2).

[7] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[8] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).