U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK E. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

Docket No. 97-1537; Submitted on the Record;
Issued February 10, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that he sustained bilateral knee damage causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for review of the case on its merits under 5 U.S.C. § 8128.

On December 22, 1995 appellant, then a 49-year-old custodian, filed a claim alleging that factors of his employment caused sore knees, loss of mobility and bilateral articular cartilage damage. Appellant described the implicated employment factors as stooping, lifting, bending "and a number of other body mechanics related to cleaning a very large postal facility."

By letters dated January 17, 1996, the Office requested further information from both the employing establishment and from appellant. The Office specifically requested that appellant describe in detail the implicated employment activities and provide a comprehensive medical report from his treating physician, which described his symptoms, examination results, and the history of injury which should include a rationalized medical opinion supporting causal relation between the implicated employment factors and the condition diagnosed.

The employing establishment provided a copy of appellant's job description.

Appellant provided a January 30, 1996 statement, in which he noted that his job duties contributed to his condition. Appellant identified dumping trash, cleaning floors and restrooms, compacting cardboard and trash, changing light bulbs, spreading salt and shoveling snow, using a snow blower and a leaf blower, hauling heavy equipment to storage, moving office furniture and unloading salt. He claimed that he repetitively lifted heavy objects, pushed and pulled equipment and continuously bent and stooped, all for varying lengths of time. Appellant indicated that his condition was more intense when he was less mobile.

By decision dated April 2, 1996, the Office rejected appellant's claim finding that he failed to establish fact of injury. The Office found that appellant failed to submit a comprehensive medical report discussing the condition found, providing a diagnosis and containing a rationalized medical opinion supporting causal relation with the identified employment activities.

By letter dated April 23, 1996, appellant requested reconsideration and enclosed further evidence. A December 29, 1995 note from Dr. Joseph B. Blanda, a Board-certified orthopedic surgeon, stated: "[Appellant] has articular cartilage damage in both his left knee and right knee. He needs to undergo arthroscopic surgery on both knees for this condition.… It is related to his job as a custodian because of the recurrent episodes of trauma that he has sustained to his knees while at work…." A December 29, 1995 CA-20 attending physician's report from Dr. Blanda noted a history of injury as "bilateral knee pain secondary to multi-injuries at work," noted findings as "diffuse degenerative changes of knee," and gave the diagnosis as "L[eft] knee chronic ACL[1] [with] post-traumatic ACD,[2] R[ight] knee ACD." In response to the form question as to whether the condition found was caused or aggravated by an employment activity, he checked nothing but annotated "Direct relationship to." December 1995 office progress notes from Dr. Blanda were also submitted, which merely stated that appellant presented "with bilateral knee pain secondary to multiple injuries at work. He states that his knees get extremely sore after a busy day at work." Dr. Blanda also noted that at that time appellant had a well-healed scar on the medial aspect of his left knee.

Also submitted was a February 29, 1996 operative report of appellant's left knee arthroscopic chondroplasty of the patellofemoral joint. Progress notes from March and April 1996 did not include diagnoses or discuss causal relation. Hospital admission and discharge paperwork was also submitted. An anterior cruciate ligament tear was noted as an impression on unsigned admission paperwork. Causation was not discussed.

By decision dated May 30, 1996, the Office modified in part the April 2, 1996 decision and affirmed it as modified. The Office found that the medical evidence established the presence of a medical condition, but that causal relationship was not established and denied appellant's claim on that basis.

By letter dated December 6, 1996, appellant requested reconsideration and in support he resubmitted his statement of factors implicated in causing his condition and his job description. Also resubmitted was Dr. Blanda's December 29, 1995 note.

By decision dated January 28, 1997, the Office denied appellant's request for a review of his case on its merits under 5 U.S.C. § 8128 finding that he failed to identify the grounds upon which reconsideration was being requested and failed to submit relevant evidence not previously considered or present legal contentions not previously considered. The Office noted that the

[1] Anterior cruciate ligament.

[2] Articular cartilage damage.

evidence submitted with appellant's reconsideration request had been previously submitted to and considered by the Office.

The Board finds that appellant has failed to establish that he sustained bilateral knee damage causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim, including the fact that he 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.[4]

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[5] (2) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed;[6] 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.[7] The medical evidence required to establish causal relationship, generally, 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,[8] must be one of reasonable medical certainty,[9] 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.[10]

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[3] 5 U.S.C. §§ 8101-8193.

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

[5] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[6] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[7] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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

[9] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

In the instant case, appellant initially submitted only a statement of duty factors that he implicated as causing his bilateral knee condition, however, he failed to submit any medical evidence establishing that he had any such medical condition of his knees. As appellant failed to meet the second step required in establishing that he sustained an occupational injury in the performance of duty, causally related to factors of his federal employment, the Office was correct in denying his claim on April 2, 1996. However, thereafter appellant submitted medical evidence establishing that he had bilateral articular cartilage damage, for which he underwent arthroscopic surgery on February 29, 1996. None of this medical evidence, however, contained a rationalized medical opinion relating the development of appellant's articular cartilage damage to his regular work duties involving bending, lifting, and stooping, or involving pushing, pulling, sweeping, shoveling, snow or leaf blowing, dumping, cleaning, compacting, storing, changing, spreading, unloading or hauling. Dr. Blanda attributed appellant's bilateral knee condition to "recurrent episodes of trauma," which he did not identify or discuss, let alone attempt to explain the relationship. He also attributed appellant's knee pain to "multi-injuries at work," without identifying or discussing these injuries and without explaining the causal relationship. The Board notes that appellant failed completely to identify any specific episodes of trauma or injury related to his employment, instead implicating only his routine custodial duties as causative factors. In none of the reports, progress notes, or form reports, does Dr. Blanda attribute the development of appellant's bilateral articular cartilage damage to his routine job duties and functions. Therefore, his reports do not support the causal relationship between the work factors implicated by appellant, his routine duties and the development of his articular cartilage damage. As Dr. Blanda does not even support that appellant's routine duties were the proximate cause of his articular cartilage damage, his reports do not satisfy the third step required in establishing his occupational illness claim and an analysis of the strength of the medical rationale provided in support of the causal relationship opinion is not necessary.

Therefore, the May 30, 1996 decision of the Office was appropriate and correct.

Thereafter, appellant again requested reconsideration, but in support he submitted only evidence previously of record and already considered by the Office for its May 30, 1996 decision.

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.[11] Although it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128(a),[12] the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

[11] *Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

[12] *See Charles E. White*, 24 ECAB 85 (1972).

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law, or
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> "(ii) Advancing a point of law or fact not previously considered by the Office, or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[13]

Section 10.138(b)(2) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will denied by the Office without review of the merits of the claim.[14] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Act.[15]

Evidence which does not address the particular issue involved,[16] or evidence which is repetitive or cumulative of that already in the record,[17] does not constitute a basis for reopening a case.

In the instant case, appellant demonstrated no erroneous application of law, advanced no point of law not previously considered by the Office, and submitted only evidence repetitive of that already in the record, which had been previously considered by the Office. Consequently, appellant provided no basis for reopening his claim under section 10.138(b)(2).

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[18]

Appellant has made no showing of any such abuse of discretion in this case.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 2, 1997, May 30 and April 2, 1996 are hereby affirmed.

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[13] 20 C.F.R. § 10.138(b)(1).

[14] 20 C.F.R. § 10.138(b)(2).

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

[16] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[17] *Eugene F. Butler*, 36 ECAB 393 (1984).

[18] *Daniel J. Perea*, 42 ECAB 214 (1990).

Dated, Washington, D.C.
February 10, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member