U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN A. HECHT and U.S. POSTAL SERVICE,
POST OFFICE, San Franciso, Calif.

Docket No. 97-1708; Submitted on the Record;
Issued February 24, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof to establish that he developed condition(s) of his spine, lumbar, thoracic and/or cervical injuries in the performance of duty causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion in its decisions of January 28 and March 19, 1997.

On August 3, 1994 appellant, then a 42-year-old collection driver, filed an occupational disease claim alleging that he developed tendinitis in both arms which he felt to be causally related to factors of his federal employment. By decision dated November 3, 1994, the Office denied the claim on the basis that fact of injury had not been established.

On March 15, 1995 appellant filed a separate occupational disease claim indicating the development of a spinal condition/injury which he felt to be causally related to factors of his federal employment. By decision dated August 9, 1995, the Office denied appellant's entitlement to compensation as the factual and medical evidence of record failed to establish the claimed medical condition as being causally related to his federal employment.

A request for a hearing was filed and a hearing was held on February 27, 1996 for both cases.[1] At the hearing, appellant described in detail the physical difficulties he has experienced with his upper and lower extremities as a result of his back condition(s). Appellant further described his subsequent course of medical treatment for injuries/conditions experienced.

[1] The record indicates that a traumatic injury on August 20, 1993 was accepted by the Office for a lumbar strain and compensation was provided. Appellant filed a recurrence claim on May 16,1994 which the Office denied on August 18, 1994. Appellant requested a hearing, but later requested cancellation on the basis that he filed the wrong claim form. On November 17, 1993 appellant filed a claim for a traumatic injury which allegedly occurred on November 11, 1993 while squatting and lifting. By decision dated August 9, 1995, the Office denied appellant's entitlement to compensation as fact of injury had not been established.

Several medical reports were submitted along with copies of magnetic resonance imaging (MRI) scans of appellant's lumbar and cervical spines conducted on February 8, 1996 and January 26, 1995.

In an August 29, 1994 medical report, Dr. Wendy E. Shearn, a Board-certified internist, provided a history of appellant's back problems and noted findings on her examination of August 1 and September 20, 1994. Dr. Shearn opined that appellant had not recovered from his original disability. She stated:

> "The diagnosis for the recurring condition is the same as the original injury. [Appellant's] back pain and arm pain symptoms are due to repetitive lifting activities at work. His current symptoms are expected to continue and in the future he may have aggravations. [Appellant] requires physical therapy now and also psychotherapy for the depression which has occurred as a result of the work injury. He is not permanent and stationary."

In a February 21, 1995 report, Dr. Gregory F. Pauxtis, a neurologist, noted that appellant had previously been seen for neurologic consultation of his spinal complaints. Dr. Pauxtis noted his findings on examination and provided an assessment of: (1) low back pain, secondary to lumbar spinal stenosis and left L5-S1 disc protusion; (2) cervicalgia: secondary to mild disc disease; and (3) psychiatric disorder, noted with paranoia and auditory hallucinations. Dr. Pauxtis stated:

> "Overall a complicated case, with significant lumbar spinal stenosis, and a psychiatric disorder that is clouding the resolution of this case. It is my opinion that the psychiatric disorder has rendered the patient incapable of coping in the work environment, and that the Social Security application should be approved. It is my opinion that this 43[-]year[-]old man has spinal disease, which by the [appellant's] account was accumulated at his work. The workers compensation issues were summarized by Dr. Shearn, and I will defer to her opinion."

In his September 6, 1995 report, Dr. Pauxtis essentially reiterated his opinion expressed in his February 21, 1995 report. Additionally, he opined that appellant was stationary and permanent, and strongly recommended that appellant not return to work.

After the hearing was conducted, the Office received a March 15, 1996 report from Dr. Pauxtis which indicated that appellant has "low back pain, with severe lumbar spine stenosis, herniated lumbar/sacral disc, left S1 radiculopathy," "cervical spine pain, with bilateral nerve root disease, including herniated disc." The report further indicated in part that:

> "…Overall, [appellant] has sustained multiple trauma to the spine, accumulating illness until May 1994, at which time, he was unable to stand and work any appreciable time. The outlined job duties are responsible for the injuries, since no other outside activity has been identified that could precipitate this spinal condition. [Appellant] would not have these complaints or objective findings, except for sustaining the repetitive injuries as an [employing establishment] employee.

> "It is interesting to review records of previous medical and psychiatric opinions. It is my professional opinion that this patient requires the patience to interview him in detail…. [Appellant's] history and findings reveal a significant spine trauma precipitated from his employment…."

By decision dated October 10, 1996, the hearing representative found that appellant failed to supply sufficient medical evidence to support the development of a specifically diagnosed medical condition(s) in a way causally related to factors of his federal employment with sufficient medical rationale to support the opinion rendered. Accordingly, the November 23, 1994 and August 9, 1995 decisions were affirmed.

By letters dated November 18, November 27 and December 14, 1996, appellant requested reconsideration of both claims. Appellant had submitted a November 18, 1996 letter along with an application for review, but later clarified he wanted a reconsideration and not a review by the Board. By letter received December 16, 1996, appellant submitted copies of documents filed with the National Labor Relations Board in connection with his charges against his union for failure to fairly represent him and copies of previously submitted medical reports and MRI reports. The previously submitted medical and MRI reports included Dr. Pauxtis' June 26, September 6, 1995 and March 15, 1996 reports; Dr. Shearn's August 29, 1994 report and the January 26 and February 8, 1995 MRI reports. No new medical evidence was submitted.

In a decision dated January 28, 1997, the Office denied reconsideration of appellant's claim on the grounds that the evidence submitted was repetitious or irrelevant and thus insufficient to warrant review of the prior decision.

Appellant filed a second reconsideration request on February 12, 1997. Appellant stated that the doctor's work restriction, "OK route with pushcart" was ignored and concealed by management. Appellant stated that he was sent to collections duty, doing heavy, repetitive and lifting motions. No additional factual nor medical evidence accompanied the reconsideration request from the claims set forth in the decision of October 10, 1996.

By decision dated March 19, 1997, the Office denied reconsideration of appellant's claim on the grounds that the evidence submitted was immaterial and thus insufficient to warrant a review of the prior decision. In the accompanying memorandum to the Director, incorporated by reference, the Office noted that appellant was referring to a third workers' compensation claim with a date of injury, August 20, 1993. The Office further noted that the claim was accepted for lumbar strain and continuing causal relationship was denied on August 18, 1994.

The Board finds that appellant has failed to meet his burden of proof to establish that he developed condition(s) of his spine, lumbar, thoracic and/or cervical injuries in the performance of duty causally related to factors of his employment.

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 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.[2] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[3] 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, [4]must be one of reasonable medical certainty [5] 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.[6]

In this case, appellant has failed to supply sufficient medical evidence to support the development of a specifically diagnosed medical condition(s) in any way causally related to factors of his federal employment with sufficient medical rationale to support the opinion rendered. In her August 29, 1994 report, Dr. Shearn states that appellant's "back pain and arm pain symptoms are due to repetitive lifting activities at work." Although Dr. Shearn displays a knowledge of appellant's specific employment duties, she fails to provide a definitive diagnosis as to the nature of appellant's condition and fails to provide medical rationale for her opinion on causal relationship. Therefore, her opinion is insufficient to establish that appellant's condition(s) are causally related to his employment.

In his most recent report of March 15, 1996, Dr. Pauxtis indicated in part that "…the outlined job duties are responsible for the injuries, since no other outside activity has been identified that could precipitate this spinal condition.…" The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptotic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.[7] Because he failed to supply medical rationale for his opinion, this evidence is not sufficient to support appellant's development of a physical condition in any way causally related to factors of his federal employment. Likewise, Dr. Pauxtis' opinion rendered in his February 21, 1995 report is also deficient. He indicated in part that, "…[I]t is my opinion that this 43-year-old man has spinal disease, which by the patient's account was accumulated at his work.…" The Board has held that an award of

[2] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[3] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may not be necessary; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

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

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

compensation may not be based on surmise, conjecture or speculation or upon appellant's own belief that there is a causal relationship between his condition and his employment.[8] Thus, Dr. Pauxtis' statement clearly fails to reflect a reasoned opinion that appellant's condition(s) is causally related to factors of his federal employment.

The Board further finds that the Office, in both of its decisions of January 28 and March 19, 1997, properly denied appellant's requests for reconsideration under section 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which 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
>
> "(ii) Advancing a point of law or fact not previously considered by the Office, or
>
> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[9]

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 be denied by the Office without review of the merits of the claim.[10] Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.[11] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[12]

In the present case, the Office denied appellant's claim on the grounds that medical evidence did not establish that his condition(s) were causally related to factors of his federal employment. In support of his first request for reconsideration, appellant submitted copies of documents filed with the National Labor Relations Board and copies of previously submitted medical reports and MRI reports. As previously submitted medical reports and MRI reports duplicates evidence already in the case record, it has no evidentiary value and does not constitute a basis for reopening the case.[13] Likewise, the complaint appellant filed against his union with the National Labor Relations Board concerning his dispute with his employer over work assignments is not relevant to this claim and thus does not constitute a basis for reopening the

[8] *William S. Wright*, 45 ECAB 498 (1994).

[9] 20 C.F.R. § 10.138(b)(1).

[10] *See* 20 C.F.R. § 10.138(b)(2).

[11] *Daniel Deparini*, 44 ECAB 657 (1993).

[12] *Id.*

[13] *Id.*

case.[14] In his November 27, 1996 statement which the Office received with appellant's November 18, 1996 reconsideration request, appellant argued that Dr. Pauxtis stated that his condition was work related. Appellant argued about the interpretation of Dr. Pauxtis' working "It is my opinion that this 43[-]year[-]old man has spinal disease, which by the patient's account, was accumulated at his work." Appellant argued that the phrase "by the patient's account" is a qualifying prepositional phrase since his job duties are not in question. Appellant essentially made the same argument on his application for review. In his December 14, 1996 letter, appellant inquires why Dr. Pauxtis would write in the same report "It is not clear to me why the worker's compensation issue was denied." These arguments are not relevant to the issue of whether appellant's condition(s) are causally related to his federal employment is medical in nature and Dr. Pauxtis' reports were previously considered not found to be competent medical evidence.[15] Thus, appellant did not submit relevant and probative evidence or sufficient arguments not previously considered by the Office and his reconsideration request was properly denied.

In his second reconsideration request, appellant referred to a workers' compensation claim with a date of injury of August 20, 1993. This claim was accepted for lumbar strain and continuing causal relationship was denied on August 18, 1994. All requests for reconsideration should be accompanied by either new evidence which is relevant to the issue or an arguable case for error in fact or law. In the instant reconsideration request, appellant did not submit any additional factual or medical evidence. Appellant's statement that management ignored his work restrictions is not relevant to his current claim for work-related back and arm conditions and is not an arguable case for error in fact or law. As appellant did not submit relevant and probative evidence, the Board finds that the Office properly denied appellant's second request for reconsideration.

[14] *Id.*

[15] *See Mary J. Briggs*, 37 ECAB 578 (1986).

The decisions of the Office of Workers' Compensation Programs dated March 19, January 28, 1997 and October 10, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 24, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member