U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD C. BODIGHEIMER and DEPARTMENT OF THE TREASURY, U.S. SECRET SERVICE, Century City, Calif..

Docket No. 97-1578; Submitted on the Record;
Issued January 25, 1999

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 he sustained a recurrence of disability on November 13, 1995 causally related to his October 1, 1990 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained a recurrence of disability on November 13, 1995 causally related to his October 1, 1990 employment injury.

Where appellant claims a 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.[1] This burden includes the necessity of furnishing evidenced 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.[2]

In the instant case, the Office accepted that appellant sustained chronic cervical and lumbar strain following an October 1, 1990 motor vehicle accident. Following the injury, appellant worked limited duty until May 1991, when he returned to his regular employment. On November 30, 1995 appellant alleged that he sustained a recurrence of disability on November 13, 1995 causally related to his October 1, 1990 employment injury. Appellant stopped work following the alleged recurrence of disability on November 15, 1995 and returned to work on November 29, 1995.

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[1] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[2] *Id.*

By decision dated November 14, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between his accepted injury and the claimed condition or disability. By decision dated March 11, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant review of the prior decision.

In support of his claim for a recurrence of disability, appellant submitted a report dated November 15, 1995 from Dr. Elliott A. Schaffzin, a Board-certified orthopedic surgeon. Dr. Schaffzin discussed appellant's complaints of increased pain in his low back and noted that appellant was uncertain as to the cause of the pain. He diagnosed acute lumbar strain and stated, "[Appellant's] present problem represents an exacerbation of his preexisting industrially-related symptoms. He has not experienced a complete recovery from the 1991 injury, but has been working full duty." However, Dr. Schaffzin does not explain how, with reference to the specific facts of the case, appellant's 1991 cervical and lumbar strain caused any condition or disability five years later. Medical reports not containing rationale on causal relation are entitled to little probative value and are insufficient to meet appellant's burden of proof.[3]

Appellant further submitted progress reports from Dr. Schaffzin dated November 22 and December 6, 1995 and January 5, 1996. In the progress reports, however, Dr. Schaffzin did not offer an opinion as to whether appellant's current condition and disability was causally related to his accepted employment injury and thus the reports are of little probative value.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[4] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 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 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

[3] *Arlonia B. Taylor*, 44 ECAB 591 (1993)

[4] *Donald W. Long*, 41 ECAB 142 (1989).

(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."[5]

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.[6] 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.[7] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[8]

In the present case, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained a recurrence of disability on November 13, 1995 causally related to his October 1, 1990 employment injury. In support of his request for reconsideration, appellant resubmitted reports from Dr. Schaffzin dated November 15, November 22 and December 6, 1995 and January 5, 1996. However, as this evidence duplicated evidence already contained in the case record it does not constitute a basis for reopening appellant's claim for merit review under section 10.138.[9]

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, he has not established that the Office abused its discretion in denying his request for review under section 8128 of the Act.

[5] 20 C.F.R. § 10.138(b)(1).

[6] *See* 20 C.F.R. § 10.138(b)(2).

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

[8] *Id.*

[9] *Richard L. Ballard*, 44 ECAB 146 (1992).

The decisions of the Office of Workers' Compensation Programs dated March 11, 1997 and November 14, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member