U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL M. YOUNT and U.S. POSTAL SERVICE,
POST OFFICE, Cary, N.C.

Docket No. 97-2692; Submitted on the Record;
Issued June 14, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue are: (1) whether appellant has established that his March 28, 1996 spinal surgery and resulting total disability from March 27 to June 2, 1996 was causally related to his January 2, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On January 2, 1996 appellant filed a claim for a traumatic injury which occurred on that date when he strained his back lifting a trash container. The Office accepted appellant's claim for lumbosacral strain.

On March 28, 1996 appellant underwent a "[t]otal decompressioin laminectomy of L3-5 and part of L6 with enlargement foraminotomy of L5-6, left and decompression of the nerve roots and theca and removal of obvious herniated nucleus pulposus at L3-4, central and left."

On June 12, 1996 appellant filed a claim for compensation on the account of traumatic injury or occupational disease (Form CA-7) requesting compensation from May 11 to June 2, 1996.

By decision dated September 18, 1996, the Office denied appellant's claim for compensation from May 11 to June 2, 1996 on the grounds that the evidence did not establish that his March 1996 surgery and subsequent disability for work was causally related to his January 1996 employment injury.

By decision dated April 11, 1997, the Office found that appellant was not entitled to continuation of pay from March 27 to May 10, 1996 on the grounds that the evidence did not establish that he was totally disabled due to his January 1996 employment injury.

In a letter dated June 24, 1997, appellant requested reconsideration and submitted additional medical evidence. By decision dated June 30, 1997, the Office found that the

evidence submitted was repetitious and immaterial and thus insufficient to warrant review of its prior decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that his March 28, 1996 spinal surgery and resulting disability for work from March 27 to June 2, 1996 was due to his January 2, 1996 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.[2] As part of this burden, the claimant must present rationalized medical evidence, based upon a complete and accurate medical background, showing causal relationship.[3]

In a report dated January 5, 1996, Dr. F. Church stated that appellant related pain after lifting a wastebasket at work and diagnosed "[a]cute lumbosacral strains, status post lumbar laminectomy 1993." He found that appellant should remain off work until January 16, 1996. In an accompanying duty status report of the same date, Dr. Church diagnosed a strain. In an office visit note dated February 27, 1996, he related that appellant had continued complaints due to his accident on January 5 and diagnosed "[p]ersistent lumbar strain [versus] spinal stenosis." As Dr. Church's reports do not address the issue of appellant's March 1996 surgery and subsequent disability from employment, they are of little relevance to the issue at hand.

In a report dated February 29, 1996, Dr. Stephen C. Boone, a Board-certified neurosurgeon, discussed appellant's prior history of surgery on a herniated nucleus pulposus at L5-6 in February 1993. He stated that appellant related on the onset of low back pain on February 2, 1996 while at work emptying magazines into a dumpster. Dr. Boone recommended objective testing. As he does not address the cause of appellant's low back pain, Dr. Boone's report is insufficient to meet appellant's burden of proof.

In a report dated March 19, 1996, Dr. Boone discussed the results of objective testing. He found that the magnetic resonance imaging scan revealed "evidence of previous left[-]sided hemilaminectomy at L5-6 and [the] possibility of some recurrent disk at L5-6 caudally and possibly a free fragment. There is also moderate stenosis at L4-5 and L3-4 with probable small central right disk fragment at L3-4 migrating slightly inferiorly." He recommended a lumbar myelogram with a post myelogram computer tomography scan, with surgery to follow as necessary.

Dr. Boone performed a decompressive laminectomy and removal of a herniated nucleus pulposus at L3-4 on March 28, 1996. Following the surgery, he diagnosed "[s]pinal stenosis of L3-4 and 5 with obvious herniated disk with free fragment at L3-4 and only a bulging disk at L4-

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Joseph T. Gulla*, 36 ECAB 516 (1985).

5 with only scar tissue at L5-6, left." In the discharge summary dated April 4, 1996, Dr. Boone related that appellant sustained an injury on February 2, 1996 while emptying a drum at work. He stated that appellant had a "new herniated disc at L3-4 which was most likely associated with the lifting accident at work." Dr. Boone, however, listed the injury as occurring a month later than specified by appellant. Further, his opinion that appellant's herniated disc at L3-4 was "most likely" due to lifting at work is speculative in nature and thus of diminished probative value.[4]

In a form report dated April 25, 1996, Dr. Boone indicated that appellant was status post lumbar laminectomy and was totally disabled form March 26, 1996 to the present. He checked "yes" that the history of injury corresponded to that given by appellant. The Board has held that a physician's opinion on causal relation that consists only of checking "yes" to the form's question of whether appellant's condition was related to the history as given, without any explanation or rationale, has little probative value and is insufficient to establish causal relationship.[5]

In a form report dated May 10, 1996, Dr. Boone diagnosed spinal stenosis at L3-4 and L4-5, a herniated disk at L3-4 and a bulging disk at L4-5. He checked "yes" that the condition was caused or aggravated by employment and provided as a rationale that "while emptying a 55[-]gallon drum filled with magazines into a dumpster [on] February 2, 1996 [he] experienced low back pain with radiation into both thighs anteriorly." Dr. Boone opined that appellant was totally disabled from March 27, 1996 to the present. He however, again noted an incorrect date of injury and further did not explain how, with reference to the specific facts of the instant case, appellant's lifting of the dumpster caused or aggravated the diagnosed conditions. The Office only accepted the claim for lumbosacral strain and consequently appellant must submit rationalized medical evidence to establish that his other diagnosed conditions are due to his January 2, 1996 employment injury.[6] The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.[7] Appellant failed to submit such evidence in the present case and, consequently, failed to discharge his burden of proof.

The Board, therefore, finds that the Office properly denied appellant's claim for continuation of pay from March 27 to May 10, 1996 and his claim for disability compensation from May 11 to June 2, 1996 as he failed to submit sufficient rationalized medical evidence to establish that his March 1996 surgery and subsequent disability was causally related to his January 2, 1996 employment injury.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

[4] *Norman E. Underwood*, 43 ECAB 719 (1992).

[5] *Debra S. King*, 44 ECAB 203 (1992).

[6] *See Sandra Dixon-Mills*, 44 ECAB 882 (1993).

[7] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

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."[8]

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.[9] 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.[10] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11]

In support of his request for reconsideration, appellant resubmitted a discharge summary dated April 9, 1996 and treatment notes from Dr. Church dated January 5 and February 27, 1996. As this evidence duplicated evidence already contained in the record, it does not constitute a basis for reopening appellant's case for merit review.[12]

Appellant further submitted an office visit note from Dr. Church dated November 17, 1995, in which the physician noted that appellant complained of "vague back symptoms." As this report predated appellant's January 1996 injury, it is not relevant to the present issue.

In his request for reconsideration, appellant noted that his prior herniated disc which was operated on in 1993 occurred at L4-5 while the herniated disc which was operated on in March 1996 occurred at L3-4. However, the issue in the present case, whether appellant was totally disabled from March 27 to June 2, 1996 due to his accepted employment injury, is medical in nature and can only be resolved by the submission of medical evidence.[13] As appellant has not submitted new medical evidence relating his herniated disc at L3-4 to his January 2, 1996

[8] 20 C.F.R. § 10.138(b)(1).

[9] *See* 20 C.F.R. § 10.138(b)(2).

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

[11] *Id.*

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

[13] *Ronald M. Cokes*, 46 ECAB 967 (1995).

employment injury, he has failed to submit evidence sufficient to warrant a reopening of his claim.

Abuse of discretion can generally only be 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.[14] Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated June 30 and April 11, 1997 and September 18, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 14, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[14] *Rebel L. Cantrell*, 44 ECAB 660 (1993).