

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELVIN A. HAWKS, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 98-2323; Submitted on the Record;
Issued September 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On May 18, 1997 appellant, a 32-year-old distribution clerk, allegedly sustained a sharp pain in his lower back while awkwardly turning his body. Appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine on June 4, 1997 which revealed a large intravertebral herniated disc at L5-S1. He was examined on June 9, 1997 by Dr. Arnold Zeal, a Board-certified neurosurgeon, who noted a "massive" disc herniation at L5-S1, and recommended that appellant undergo surgery. On January 8, 1998 appellant filed a Form CA-1 claim based on traumatic injury, seeking benefits based on his lower back injury, which he alleged was caused by the May 18, 1997 employment incident.

In support of his claim, appellant submitted six progress reports from Dr. Zeal dated July 2 and 21, August 18, September 23 and October 23, 1997 and January 28, 1998. In these reports, he stated findings on examination and made recommendations to appellant for further treatment, but did not provide an opinion as to whether his lower back injury was caused by the May 18, 1997 employment incident.

In a letter to appellant dated February 20, 1998, the Office requested that appellant submit additional information in support of his claim, including a medical report, opinion and diagnosis from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office informed the employee that he had 30 days to submit the requested information.

By decision dated March 27, 1998, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained the claimed injury in the performance of duty.

By letter dated April 22, 1998, appellant requested reconsideration. In support of his claim, appellant submitted: an undated request for authorization to undergo surgery; a June 23, 1997 hospital discharge summary; an August 18, 1997 certificate of medical treatment from Dr. Zeal which stated that he had been treating appellant since June 9, 1997; and a September 23, 1997 treatment note from Dr. Zeal which stated that appellant was to remain on light duty pending follow-up and reassessment in one month. Appellant also submitted medical reports from Dr. Zeal which he submitted prior to the Office's previous decision.

By decision dated May 11, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

factual and medical background of the claimant, must be one of reasonable medical certainty 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 the present case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁷ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on May 18, 1997 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship are Dr. Zeal's medical reports and the June 4, 1997 MRI scan report. Dr. Zeal's reports merely indicate that appellant had a herniated disc and that he had been treating appellant for a lower back condition over a course of months; none of these were sufficient to constitute a rationalized, probative medical opinion. In addition, the MRI scan report does not contain a medical opinion from a physician indicating whether appellant's herniated disc or lower back injury/condition were employment related. None of the medical documents submitted by appellant, therefore, provide a probative, rationalized medical opinion sufficient to demonstrate that appellant's May 18, 1997 employment incident caused a personal injury or resultant disability. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. Appellant did not provide a medical opinion to sufficiently describe or explain the medical process through which the May 18, 1997 work accident would have been competent to cause the claimed injury. Thus, the Office's decision is affirmed.

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

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁸ 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁹ 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.¹⁰

⁶ *Id.*

⁷ *See John J. Carlone*, 41 ECAB 353 (1989).

⁸ 20 C.F.R. § 10.138(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.138(b)(2).

¹⁰ *Howard A. Williams*, 45 ECAB 853 (1994).

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted the treatment notes from Dr. Zeal, the June 23, 1997 hospital discharge summary and the request for authorization to have surgery with his request for reconsideration, these documents were either not relevant or pertinent to the issue in this case, or were repetitious of evidence which had already been reviewed by the Office in previous decisions. This is important since the outstanding issue in the case -- whether appellant's herniated disc and lower back injury were causally related to the May 18, 1997 employment incident -- was medical in nature. Thus, his request did not contain any new and relevant medical evidence for the Office to review. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions.

Additionally, appellant's April 22, 1998 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that his lower back injury and herniated disc were causally related to the May 18, 1997 employment incident, he failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The May 11 and March 27, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 9, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member