

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT J. McLAUGHLIN and DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION, PARKER DAM PROJECT, CA

*Docket No. 98-1266; Submitted on the Record;  
Issued April 12, 2000*

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DECISION and ORDER

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

The issues are: (1) whether appellant's right hip condition was causally related to his January 11, 1983 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On January 11, 1983 appellant, then a 42-year-old hydroelectric mechanic, skinned his left knee in the performance of duty when he slipped off a roof.

On June 19, 1997 appellant filed a claim for an injury to his right hip which he attributed to his January 11, 1983 employment injury.

In a narrative report dated October 31, 1996, Dr. Marc H. Zimmerman, a Board-certified orthopedic surgeon, related that appellant was complaining of left knee pain and right hip pain. He provided findings on examination and noted that he had informed appellant that it did not appear that his conditions were work related.

In a report dated May 3, 1997, Dr. William E. Bowman, an orthopedic surgeon, stated his opinion that appellant's right hip condition was unrelated to his 1983 left knee injury. He stated:

"The hip abnormality is probably a normal variation and deserved workup because of concern for the possibility of a neoplasm. The findings on the bone scan with regards to the right hip have no relationship to the original industrial injury ... the right hip abnormality and any treatment for that condition are unrelated to the original industrial injury."

In a report dated June 19, 1997, Dr. Zimmerman related that appellant was having increasing pain in the right hip. He stated that he could not determine whether the right hip injury was causally related to the 1983 employment injury because so much time had passed.

By decision dated November 12, 1997, the Office denied appellant's claim for a right hip injury.

By letter dated November 29, 1997, appellant requested reconsideration of the denial of his claim but submitted no new evidence or argument.

By decision dated February 17, 1998, the Office denied appellant's request for further merit review of his claim.<sup>1</sup>

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury to his right hip causally related to his January 11, 1983 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>2</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.<sup>3</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>4</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>6</sup>

In this case, on June 19, 1997 appellant filed a claim for an injury to his right hip which he attributed to his January 11, 1983 employment injury. He submitted medical evidence in support of his claim.

In a report dated October 31, 1996, Dr. Zimmerman related that appellant was complaining of left knee pain and right hip pain, provided findings on examination and noted that it did not appear that his condition was work related. In a report dated June 19, 1997, he stated that he could not determine whether the right hip injury was causally related to the 1983 employment injury because so much time had passed. As Dr. Zimmerman did not opine that appellant's right hip condition was causally related to his January 11, 1983 employment injury, these reports do not discharge appellant's burden of proof.

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<sup>1</sup> The Board notes that appellant submitted new evidence with his appeal. This evidence was not before the Office at the time it issued its February 17, 1998 and November 12, 1997 decisions and the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

<sup>2</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>3</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>5</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>6</sup> *Joseph T. Gulla*, *supra* note 4.

In a report dated May 3, 1997, Dr. Bowman stated his opinion that appellant's right hip condition was not related to his 1983 left knee injury. Therefore, this report does not establish that appellant sustained a right hip condition causally related to his January 11, 1983 employment-related left knee injury.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

In this case, appellant submitted no relevant and pertinent evidence with his request for reconsideration. Nor did he advance a point of law or a fact not previously considered by the Office or show that the Office erroneously applied or interpreted a point of law. Therefore, the Office properly denied his request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated February 17, 1998 and November 12, 1997 are affirmed.

Dated, Washington, D.C.  
April 12, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.138(b)(1).

<sup>8</sup> 20 C.F.R. § 10.138(b)(2).