

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM M. BRITT and DEPARTMENT OF LABOR,
BUREAU OF LABOR STATISTICS, Kansas City, MO

*Docket No. 99-1539; Submitted on the Record;
Issued August 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that he sustained a recurrence of disability causally related to his employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by appellant's request for reconsideration.

On March 19, 1996 appellant filed an occupational disease claim. The Office accepted his claim for right hand, wrist, forearm and elbow strain. Appellant retired from his federal employment on May 9, 1997.

On May 9, 1997 appellant filed a notice of recurrence disability.

In a June 2, 1997 report, Dr. Jennifer Finley, an attending physician, Board-certified in physical medicine and rehabilitation, noted that appellant's last visit was July 17, 1996 and diagnosed overuse syndrome of the right arm. Dr. Finley noted that appellant stated that he continued to have pain in his right forearm, which had not changed from the initial onset in 1995.

In a June 25, 1997 report, Dr. Finley diagnosed overuse syndrome of the right arm and noted that appellant continued to have pain in his forearm and upper biceps area. Dr. Finley recommended that appellant avoid aggravating factors such as "moving furniture at his antique store."

By letter dated August 1, 1997, the Office informed appellant that the evidence was insufficient to support his claim for a recurrence and advised as to the type of information necessary to support his claim.

By decision dated September 24, 1997, the Office denied appellant's claim on the basis that the evidence of record was insufficient to establish a causal relationship between his recurrence of disability and his accepted employment injury.

In a letter dated October 20, 1997, appellant requested a review of the written record.

By decision dated February 5, 1998, the Office hearing representative affirmed the Office decision on the basis that the medical evidence of record was insufficient to establish that appellant's recurrence was causally related to his accepted employment injury.

In a letter dated February 23, 1998, appellant requested reconsideration based upon Dr. Finley's October 15, 1997 report, which diagnosed overuse syndrome of the right upper extremity, as a continuing condition since his initial visit on July 17, 1996. She noted that appellant's pain started after the installation of Windows on his computer and that appellant had "described obsessively playing solitaire on Windows at work."

By decision dated June 5, 1998, the Office denied appellant's request for review on the grounds that the evidence submitted was repetitious and insufficient to warrant a merit review of the prior decision.

The Board finds that appellant has not established a recurrence of disability causally related to his employment injury.

Under the Federal Employees' Compensation Act,¹ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis.⁵ Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁶

In this case, the medical evidence, consisting of reports dated June 2 and 25, 1997 diagnosing overuse syndrome in the right arm by Dr. Finley, is insufficient to establish any causal relationship between appellant's overuse syndrome in the right arm and his right hand,

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ 20 C.F.R. § 10.121(b).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

wrist, forearm and elbow strain. Dr. Finley in her June 2, 1997 report diagnosed overuse syndrome, but provided no opinion as to the cause of this disability. In her June 25, 1997 report, Dr. Finley reiterated her diagnosis of overuse syndrome and recommended that appellant avoid aggravating factors such as moving furniture in his antique store. None of the reports by Dr. Finley provide any opinion or rationale connecting appellant's overuse syndrome and his accepted employment injury or usual employment duties. Furthermore, Dr. Finley does not note that appellant retired from the employing establishment on May 9, 1997. Therefore, the Board finds the medical evidence insufficient to meet appellant's burden of proof as none of Dr. Finley's reports provide any rationalized opinion regarding the cause of appellant's current disability.⁷

The Board further finds that the Office did not abuse its discretion by denying merit review of appellant's claim.

Section 8128(a) of the Act⁸ provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal regulations provides, in pertinent part, that 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 issues within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.⁹

With the written request, the claimant must:

(1) Show that the Office erroneously applied or interpreted a point of law;

(2) Advance a point of law or fact not previously considered by the Office; or

(3) Submit relevant and pertinent evidence not previously considered by the Office.¹⁰ Section 10.138(b)(2) of the implementing regulations provides that any application for review, 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.¹¹ Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions that are contrary to both logic and probable deductions from established facts.¹²

⁷ See *Jose Hernandez*, 47 ECAB 288 (1996) (finding that medical reports that failed to address directly the causal relationship between appellant's recurrence of disability and his employment injuries were insufficient to meet appellant's burden of proof).

⁸ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

⁹ *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

¹⁰ 20 C.F.R. § 10.138(b)(1).

¹¹ 20 C.F.R. § 10.138(b)(2).

¹² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

In support of his request for reconsideration, appellant submitted an October 15, 1997 report by Dr. Finley. In that report, Dr. Finley reiterated her diagnosis overuse syndrome of the right upper extremity, which she indicated had been a continuing condition since his initial visit on July 17, 1996 and after installation of Windows on his work computer. Dr. Finley's report does not contain an opinion, supported by medical rationale, explaining how and why appellant's overuse syndrome is related to his accepted right hand, wrist, forearm and elbow strain or discusses the impact of appellant's retirement on May 9, 1997, since the Office had accepted that appellant had developed his condition due to use of his computer mouse. Accordingly, appellant did not provide a sufficient evidentiary basis for reopening his claim and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.¹³

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹⁴ The Board finds that the Office did not abuse its discretion in denying appellant's application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated June 5 and February 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 17, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹³ *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).

¹⁴ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).