U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD J. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Burton, MI

Docket No. 99-1675; Submitted on the Record;
Issued August 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his claimed right ankle condition was causally related to his employment injury of July 14, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On July 17, 1998 appellant, then a 44-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on July 14, 1998 he sustained a bruise to his right ankle while in the performance of duty. Appellant explained that while he was pushing a U-cart through a set of swinging doors, he was struck on the ankle by another U-cart that was being pushed by a coworker. Appellant did not immediately cease work following the July 14, 1998 incident. However, approximately two and a half months later, appellant stopped work on September 28, 1998. He explained that he first sought medical attention for his claimed condition on October 1, 1998 and he returned to work the following day. Dr. Jose B. Lopez diagnosed appellant as suffering from tendinitis, causally related to his July 14, 1998 employment injury.[1] Upon returning to work, appellant was assigned limited duty per his physician's instructions.

By letter dated October 22, 1998, the Office requested that appellant submit additional factual and medical information within 30 days. The Office expressed particular interest in why appellant waited approximately two and a half months before seeking medical attention for his claimed July 14, 1998 employment injury.

In response to the Office's request, appellant provided a November 8, 1998 statement in which he explained that while he immediately felt extreme pain in his ankle after he was struck, he nonetheless continued to perform his regular job duties because he normally has a high pain tolerance. He further explained that the constant irritation from walking increased the pain to the

[1] Dr. Lopez reported his findings on a Form CA-17 (duty status report) dated October 1, 1998.

point where he was unable to stand or walk for extended periods without experiencing severe pain. Appellant indicated that he ceased work on September 28, 1998 because he could no longer bear to work on his ankle as the pain began to radiate to his knee. He initially sought treatment with an employing establishment contract physician on October 1, 1998 and then followed up with his personal physician on October 8, 1998. Appellant stated that he did not sustain any additional injuries between the date of his employment injury and the date he first sought medical attention. He went on to describe the various medical treatments he received and the subsequent periods of disability he experienced as a result of his injury.

The additional medical evidence received by the Office consisted of an October 26, 1998 Form CA-17 (duty status report) and a similarly dated PS Form 2491 (medical report), both from Dr. Douglas R. Johnson, an osteopath specializing in internal medicine. The latter report included a diagnosis of Achilles tendinitis and a history of injury of "[right] ankle struck by U-cart at work causing Achilles tendinitis." He also provided two disability notes dated October 8 and November 12, 1998, one of which indicated that appellant was temporarily disabled from work due to Achilles tendinitis.

In a decision dated November 25, 1998, the Office denied appellant's claim on the basis that the evidence of record failed to establish that appellant's right ankle condition resulted from his July 14, 1998 employment injury.

Appellant subsequently requested a review of the written record, which was postmarked January 21, 1999. He also submitted additional medical evidence, including a January 20, 1999 report from Dr. Johnson.

By decision dated March 5, 1999, the Office found that appellant did not submit his request for a review of the written record within 30 days of the Office's November 25, 1998 decision and, therefore, he was not entitled to a review as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue of causal relationship could equally well be addressed through the reconsideration process. Appellant filed an appeal with the Board on April 1, 1999.[2]

The Board finds that appellant has failed to meet his burden of proof to establish that the claimed right ankle condition was causally related to his July 14, 1998 employment injury.

A claimant seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is being

[2] The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its November 25, 1998 decision denying compensation. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. §§ 8101-8193.

claimed is causally related to the employment injury.[4] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[5]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[6] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[8] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.[9]

In the instant case, the record does not include any rationalized medical opinion evidence establishing a causal relationship between appellant's claimed right Achilles tendinitis and his employment injury of July 14, 1998. Neither Dr. Lopez nor Dr. Johnson provided a clear, detailed explanation as to how the July 14, 1998 employment injury either caused or aggravated appellant's diagnosed Achilles tendinitis. The absence of such an explanation is particularly troublesome in light of the significant lapse of time between the reported incident of July 14, 1998 and the date appellant first sought medical treatment for his right ankle. Consequently, the opinions of Drs. Lopez and Johnson do not rise to the level of rationalized medical opinion evidence.[10]

While appellant explained that his right ankle worsened as a result of his continued performance of his regular duties following the July 14, 1998 employment incident, appellant's beliefs will not suffice for purposes of establishing a causal relationship between his employment injury and his claimed condition.[11] Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship

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[4] *See Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[7] *Id.*

[8] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

[10] *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[11] *See Robert G. Morris*, *supra* note 6.

between his claimed condition and his July 14, 1998 employment injury, the Office properly denied appellant's claim for compensation.

The Board also finds that the Office properly denied appellant's request for a review of the written record.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of issuance of the decision. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of issuance of the decision, as determined by the postmark of the request.[12] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[13] In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[14]

The Office denied appellant's claim for compensation in a decision dated November 25, 1998. Appellant's request for a review of the written record was postmarked January 21, 1999, which is more than 30 days after the Office's November 25, 1998 decision. As such, appellant is not entitled to a review of the written record as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether his claimed medical condition was work related could equally well be addressed by requesting reconsideration.[15] Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a review of the written record.

[12] 20 C.F.R. § 10.616(a).

[13] *Herbert C. Holley*, 33 ECAB 140 (1981).

[14] *Rudolph Bermann*, 26 ECAB 354 (1975).

[15] The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

The decisions of the Office of Workers' Compensation Programs dated March 5, 1999 and November 25, 1998 are, hereby, affirmed.

Dated, Washington, D.C.
August 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member