U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH E. HUEBNER and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Empire, MI

Docket No. 98-1904; Submitted on the Record;
Issued January 13, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's January 5, 1998 request for reconsideration.

In a decision dated January 27, 1997, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence demonstrated that he had no residuals causally related to the employment injury of August 1, 1987, which the Office had accepted for tendinitis of both feet, multiple deformities of both feet and dropped transverse arches. The Office found that the weight of the medical evidence rested with the opinion of Dr. A. Villegas, the impartial medical specialist selected to resolve a conflict. Appellant's physicians, Dr. Matthew A. Houghton, Jr., and Dr. Daniel T. Lathrop, reported that appellant continued to suffer residuals of his August 1, 1987 employment injury, while the Office referral physician, Dr. George C. Hill, reported that there was no relationship between appellant's work and his current condition.

On January 5, 1998 appellant requested reconsideration and submitted a November 14, 1997 deposition of Dr. Houghton who testified that he had seen appellant periodically since March 14, 1980 and that at no time between March 14, 1980 and July 8, 1987 did appellant express complaints regarding his lower extremities. Asked to comment on the statement of impartial medical specialists that appellant had an aggravation of a preexisting condition, Dr. Houghton testified that in the process of doing appellant's annual physicals for the employing establishment he had never seen any evidence of any preexisting condition of the foot nor was he aware of any preexisting condition by history. He also testified that appellant's condition had worsened after surgeries, that disability from appellant's August 1, 1987 injury had not ceased, that appellant's current condition would not have developed but for his duties at the employing establishment and that appellant's foot condition was permanent. He explained that obesity was not the primary cause of appellant's current disability, "Appellant was normally a big man and the weight gain he experienced after the injury was due to his inabilities at weight-bearing exercise."

In a decision dated February 20, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was duplicative and repetitive and, therefore, insufficient to warrant review of the prior decision.

The Board finds that the Office improperly denied appellant's January 5, 1998 request for reconsideration.

Section 10.138(b)(1) of Title 20 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.[1]

The Office denied appellant's January 5, 1998 request for reconsideration on the grounds that the evidence submitted in support thereof was duplicative and repetitious. A limited review of the record shows that Dr. Houghton had previously reported, on May 24, 1993, that he had seen appellant since March 14, 1980 and that appellant had no complaints of foot discomfort prior to July 8, 1987. To this extent Dr. Houghton's deposition is repetitive of evidence previously of record and considered by the Office. Dr. Houghton's deposition adds, however, that in the process of doing appellant's annual physicals for the employing establishment, he had never seen any evidence of any preexisting condition of the foot. This adds new information to the facts of the case and is relevant to the opinion of the impartial medical specialist that appellant's foot condition was congenital. For this reason, appellant is entitled to a merit review of his claim under the third criterion noted above.

The February 20, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
January 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[1] 20 C.F.R. § 10.138(b)(1).