U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. DAVIS and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Hunker, PA

Docket No. 99-1568; Submitted on the Record;
Issued July 24, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on or about June 13, 1997, as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

On April 1, 1998 appellant, then a 57-year-old coal mine safety and health inspector, filed a notice of occupational disease and claim for pay/compensation (Form CA-2) asserting that he first realized his right knee condition was causally related to or aggravated by his employment on June 13, 1997. Appellant stated that he thought his knee was just badly bruised, but his family physician, Dr. Weber, notified him that his right knee was fractured on June 13, 1997. Appellant attributed his knee condition to the excessive crawling of his federal employment. The claim form indicated that appellant stopped work on June 9, 1997 and returned to work on July 28, 1997. Appellant retired on December 30, 1997.

In a letter dated June 2, 1998, the Office requested that appellant submit additional medical evidence in support of his claim, including a physician's well-rationalized opinion regarding the causal relationship between his claimed condition and factors of his employment. The Office noted that appellant's prior traumatic injury claim was denied by the district Office and the Branch of Hearings and Review, but they looked at all the materials submitted in regards to appellant's claim.[1] No new evidence was received.

[1] On June 13, 1997 appellant filed a notice of traumatic injury and claim for pay/compensation (Form CA-1) alleging that on June 4, 1997 he sustained an injury to his right knee when he slipped while checking No. 1 pump which was submerged in approximately 10 to 12 inches of water. He stated that he felt his knee "pop" and had swelling and fluid buildup.

In a July 10, 1998 decision, the Office disallowed appellant's claim for compensation benefits finding that the evidence of record failed to establish that an injury was sustained as alleged.[2]

By letter dated August 19, 1998 and postmarked August 21, 1998, appellant requested an oral hearing. Additional factual and medical evidence was submitted.

By decision dated September 25, 1998, the Office denied appellant's request for a hearing finding that his request was not timely filed and that the issue could be equally well addressed by requesting reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on or about June 1997, as alleged.

An employee seeking benefits under the Act[3] has the burden of establishing 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.[4] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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 factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

[2] Following the issuance of the July 10, 1998 decision, the Office received additional factual and medical information from appellant.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits and that the workplace incidents or exposure occurred as alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of his federal duties.[7] As noted above, to establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant must submit rationalized medical evidence addressing how specific work factors caused or aggravated the claimed condition. The mere fact that a disease or condition develops during a period of federal employment does not establish a work-related condition.[8] In this case, appellant has not submitted any medical evidence supporting a causal relationship between his claimed condition and his employment.[9] At the time the Office rendered its decision, the record was devoid of any statement or well-reasoned medical opinion from a physician who treated appellant for his right knee condition or rendered an opinion as to what caused appellant's condition. Appellant was advised of the necessity of providing such evidence in the Office's June 2, 1998 letter and afforded the opportunity to provide such supportive evidence.

Consequently, appellant has not established that he sustained an injury in the performance of duty.

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

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[10]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a

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[6] *Id.*

[7] Part of a claimant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors. *See Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

[8] *See Francisco D. Regoliano*, 16 ECAB 338, 340 (1965).

[9] The record reflects that appellant was advised to provide supportive medical evidence, but no evidence was received prior to the Office rendering its decision on July 10, 1998.

[10] 5 U.S.C. § 8124(b)(1).

hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[11]

The Office, in its September 25, 1998 decision, properly determined that appellant was not entitled to a hearing as a matter of right since appellant's request was not made within 30 days after the issuance of a final decision. The Office rendered its decision on July 10, 1998 and appellant's request for an oral hearing was postmarked August 21, 1998, more than 30 days after the Office rendered its decision. The Office also exercised its discretion and further considered the hearing request but concluded that appellant could equally well pursue his claim by requesting reconsideration along with the submission of factual and medical evidence. For these reasons, the Office acted properly in denying appellant's August 19, 1998 request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated September 25 and July 10, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[11] *Sandra F. Powell*, 45 ECAB 877 (1994).