U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERIC C. GONZALES and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, TX

Docket No. 99-703; Submitted on the Record;
Issued June 23, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that his heart condition was causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On October 10, 1997 appellant, then a 48-year-old industrial engineering technician, filed an occupational disease claim alleging that his pacemaker implant was causally related to factors of his federal employment. In a statement accompanying his claim, appellant attributed his heart condition and resulting pacemaker implant in August 1993 to stress caused by the performance of his employment duties.

By decision dated February 5, 1998, the Office denied appellant's claim on the grounds that the evidence did not establish an injury sustained in the performance of duty. The Office found that appellant had not alleged any compensable factors of employment. In a letter dated February 12, 1998, appellant requested a review of his claim. By decision dated March 2, 1998, the Office modified its prior decision and found that appellant had attributed his stress to the performance of his regularly assigned duties and thus had alleged compensable factors of employment. The Office found, however, that the medical evidence did not establish that appellant had a heart condition due to a compensable employment factor and therefore denied the claim on the grounds that he had not established fact of injury. Appellant requested reconsideration by letter dated September 3, 1998. By decision dated November 9, 1998, the Office modified its prior decision to reflect that the medical evidence established that appellant had a heart condition but denied the claim as the medical evidence was insufficient to establish that the condition was caused or contributed to by factors of his federal employment. On November 17, 1998 appellant again requested reconsideration and, in a decision dated December 3, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and immaterial and therefore insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that his heart condition was causally related to factors of his federal employment

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.[2]

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 the 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.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] 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,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[8]

In the present case, appellant alleged that he sustained a heart condition due to stress at work. The Office accepted that appellant primarily attributed his stress to the performance of his

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

regularly assigned duties which would constitute compensable employment factors under the Act.[9] The Office found, however, that appellant did not submit sufficient medical evidence to establish that he sustained an occupational injury due to these factors.

In support of his claim, appellant submitted a medical report dated November 4, 1997 from Dr. William C.L. Wu, a Board-certified internist and his attending physician, who described his treatment of appellant since August 1993. Dr. Wu related that appellant was admitted to the hospital in August 1993 due to chest pain and severe bradycardia. He noted that appellant had a pacemaker inserted on August 25, 1997.[10] Dr. Wu indicated that appellant experienced atrial fibrillation on October 2, 1996 and underwent an electrical cardioversion on April 19, 1997.[11] In his report, however, he did not address the relevant issue in the instant case, which is whether appellant's heart condition is causally related to his federal employment and thus his opinion is of limited probative value.[12]

In a report dated November 14, 1997, Dr. Judith L. Harris, who is Board-certified in family practice, discussed appellant's cardiac problems and opined, "I am not able to state if there is a relationship between the need for his pacemaker, his atrial fibrillation, his need for cardioversion" and his employment. As Dr. Harris did not attribute appellant's cardiac condition to his employment, her report does not support appellant's claim.

[9] Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position; *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[10] The record indicates that appellant had a pacemaker inserted on August 25, 1993 rather than August 25, 1997.

[11] Appellant submitted operative reports from Dr. Wu dated August 25, 1993 and April 19, 1997.

[12] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

In a clinic note dated August 1, 1998, Dr. Theron C. Toole, III, a Board-certified internist, noted appellant's problems included "hypertension, atrial fibrillation and sick sinus syndrome status post pacemaker." He related:

> "This is our first time evaluating [appellant]. He apparently has been followed by my former associate, Dr. Wu. [Appellant] has put in a disability claim and raises the question of whether the stress on his job causes his sick sinus syndrome and requirement of a pacemaker. I have made it clear to him that certainly there was not obvious cause and effect between the two, however, it is possible that stress at work could certainly exacerbate the condition."

Dr. Toole's finding that it "is possible" that employment-related stress "could certainly exacerbate" appellant's heart condition, without any explanatory rationale, is speculative and inconclusive in nature and therefore of diminished probative value.[13] While a medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can the opinion be speculative or equivocal.[14]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[15] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The Board further finds that the Office did not abuse its discretion in denying review of the merits of appellant's claim under section 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Under 20 C.F.R. § 10.138(b)(1), 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 issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law, or
>
> "(ii) Advancing a point of law or fact not previously considered by the Office, or

[13] *Connie Johns*, 44 ECAB 560 (1993).

[14] *Roger Dingess*, 47 ECAB 123 (1995).

[15] *Donald W. Long*, 41 ECAB 142 (1989).

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[16]

Section 10.138(b)(2) provides that any application for review of the merits of the claim 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.[17] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[18] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[19]

In support of his request for reconsideration, appellant resubmitted the April 19, 1997 operative report from Dr. Wu. As this duplicated evidence already of record, it did not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.[20]

Appellant further submitted a copy of an article on the heart and circulation, and an answer to an internet query regarding hypertension. However, these documents do not warrant a reopening of appellant's claim as the Board has held that medical texts and excerpts from publication are of no evidentiary value in establishing causal relationship between appellant's condition and factors of his employment because such materials are of general application and are not determinative of whether the specifically claimed condition is related to appellant's employment.[21] The Office, therefore, did not abuse its discretion in refusing to reopen and review appellant's claim on the merits.

[16] 20 C.F.R. § 10.138(b)(1).

[17] *See* 20 C.F.R. § 10.138(b)(2).

[18] *Daniel Deparini*, 44 ECAB 657 (1993).

[19] *Id.*

[20] *Richard L. Ballard*, 44 ECAB 146 (1992).

[21] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decisions of the Office of Workers' Compensation Programs dated December 3, November 9, March 2 and February 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 23, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member