U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN COSTIN and DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL & PREVENTION, Atlanta, GA

Docket No. 00-46; Submitted on the Record;
Issued November 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an injury on February 17, 1999 in the performance of duty, causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review constituted an abuse of discretion.

On February 19, 1999 appellant, then a 51-year-old utility systems repair operator, filed a notice of traumatic injury and claim for compensation, Form CA-1, alleging that he experienced pain in his lower back and left leg after lifting and moving a work bench from one side of the room to another in the tool room on February 17, 1999. Appellant sought treatment with Dr. Howard Ehrenfeld, a neurologist.

In a medical report dated February 18, 1999, Dr. Ehrenfeld provided a history of injury which noted a fall in 1991, where appellant suffered low back pain eventually followed by pain radiating into the left leg and calf and left foot. A summary of appellant's symptoms following the 1991 injury was noted along with a mention of a gunshot wound to appellant's left thigh which resulted in a fracture to the left femur in 1965. Dr. Ehrenfeld stated that appellant was "now seeking a cash award for loss of limb after seven years of appeals and that he needs a neurologic summary to go forward with his case." Dr. Ehrenfeld presented his findings on examination and reviewed objective tests dating from 1991 until 1994. An impression of lumbar sacral radiculopathy with intractable pain was provided. The report failed to mention appellant's claimed incident of February 17, 1999. Office notes dated February 22, April 2 and March 18, 1999 were also provided. The notes were also devoid of any mention of a work accident occurring on February 17, 1999.

In response to the Office's request for more information, appellant submitted a May 3, 1999 report from Dr. Ehrenfeld. The May 3, 1999 report noted that appellant was seen for a follow-up for back and leg pain and a lumbar radiculopathy. Dr. Ehrenfeld reported the following:

> 1. His dates of exam[ination] and treatment are February 18, 1999, March 18, 1999 and May 3, 1999.
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> 2. The history of injury is that he fell about eight feet into a metal dumpster in 1991, landed on his back, and experienced pain in his back and legs. This pain has essentially persisted the entire time up to the present, although it waxes and wanes in intensity. It has never disappeared.
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> 3. X-ray and laboratory tests are outlined in my original notes from February 18, 1999 and March 18, 1999. These are recalled from the previous records provided by [appellant]. I have not ordered any new x-rays or tests since seeing him.

My opinion is that his lumbar radiculopathy was caused by the original work injury from 1991. This is based on his current exam[ination], his history, as well as review of the medical records."

By decision dated May 24, 1999, the Office denied appellant's claim. The Office specifically found that there was no medical evidence which mentioned a work-related incident on February 17, 1999 or stated how appellant's condition was caused or aggravated by factors of his federal employment.

In an undated letter, which the Office received on June 16, 1999, appellant requested reconsideration. By decision dated June 29, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not raise any substantive legal questions or valid arguments and did not include any new or relevant evidence. Accordingly, the Office declined to reopen appellant's case on the merits.

The Board finds that appellant has not established that he sustained an injury on February 17, 1999 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 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.[2] These are

[1] 5 U.S.C. §§ 8101-8193.

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

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

Causal relationship is a medical issue,[4] and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on 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,[5] 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.[6]

In the instant case, appellant has submitted no rationalized medical evidence establishing that an injury of February 17, 1999 occurred and resulted in appellant's medical condition. None of the medical evidence submitted mentions an incident of February 17, 1999 or relate any specific employment factors at or near February 17, 1999 which explain the nature of the relationship between appellant's diagnosed condition and the specific employment factors identified by appellant.[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.[8] Neither the fact that the condition became apparent during a period of employment nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[9] Accordingly, the Office properly denied appellant's claim.

The Board also finds that the Office did not abuse its discretion by denying merit review of appellant's claim on June 29, 1999.

Under section 8128(a) of the Act,[10] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[11] which provides that a

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

[4] *Mary A. Howard,* 45 ECAB 646 (1994); *Cynthia M. Judd,* 42 ECAB 246 (1990); *Terry R. Hedman,* 38 ECAB 222 (1986).

[5] *See Morris Scanlon,* 11 ECAB 394, 385 (1960).

[6] *Gary L. Fowler,* 45 ECAB 365 (1994); *Victor J. Woodhams, supra* note 3.

[7] *Id.*

[8] *Jerry D. Osterman,* 46 ECAB 500, 508 (1995); *Manuel Garcia,* 37 ECAB 767, 773 (1986); *Juanita C. Rogers,* 34 ECAB 544, 546 (1983).

[9] *Id.*

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b) (1999).

claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by OWCP; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[12] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.[13]

In this case, the Office properly declined to review the merits of appellant's claim. In support of his reconsideration request, appellant did not attempt to submit relevant and pertinent evidence not previously considered by the Office nor did he offer any relevant information not already before the Office at the time of its May 24, 1999 decision. Inasmuch as appellant failed to submit new and relevant evidence probative to the issue of causal relationship, the Office acted within its discretion in declining to reopen the claim.

[12] 20 C.F.R. § 10.608(b) (1999).

[13] *John E. Watson*, 44 ECAB 612, 614 (1993).

The decisions of the Office of Workers' Compensation Programs dated June 29 and May 24, 1999 are hereby affirmed.

Dated, Washington, DC
November 9, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member