

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES E. MILLER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Muskogee, OK

*Docket Nos. 99-284 and 99-2171; Submitted on the Record;  
Issued November 8, 2000*

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DECISION and ORDER

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

The issues are: (1) whether appellant sustained a medical condition causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated June 5, 1998 and finalized on June 10, 1998, is in accordance with the facts and the law in this case and hereby adopts and incorporates by reference the findings and conclusions of the Office hearing representative.

Following the issuance of the Office hearing representative's June 10, 1998 decision, appellant requested reconsideration of the denial of his claim by letter dated June 24, 1998 and he submitted additional evidence. By decision dated September 17, 1998, the Office denied modification of its denial of appellant's claim.

The Board finds that the Office properly denied modification of its denial of appellant's claim in its September 17, 1998 decision.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>1</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.<sup>2</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>2</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983).

factual and medical background, showing causal relationship.<sup>3</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>4</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>5</sup>

In her June 10, 1998 decision, the Office hearing representative found that appellant had established that he was exposed to asbestos at the employing establishment but that the medical evidence of record did not establish that he sustained a medical condition as a result of this exposure. In support of his request for review of the denial of his claim, appellant submitted a report dated June 23, 1998 in which Dr. Snorri Olafsson, a pulmonologist, diagnosed pulmonary asbestosis based upon the history given by appellant of asbestos exposure, pulmonary function study of September 9, 1997 and a chest x-ray which he stated were "consistent" with asbestosis but that the x-ray indication of asbestosis had not been verified by a "B reader" radiologist." However, Dr. Olafsson's diagnosis of asbestosis was not definite as he stated only that the studies were "consistent" with asbestosis and he noted the x-ray had not been reviewed by a qualified "B reader" radiologist in order to confirm the diagnosis. Furthermore, he did not provide a rationalized medical opinion explaining whether he felt that appellant's condition was causally related to any asbestos exposure at work. As noted above, in order to meet his burden of proof, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship between the claimed medical condition and factors of his employment. Appellant failed to do so in this case and therefore the Office, in its September 17, 1998 decision, properly denied modification of its denial of appellant's claim.

The Board further finds that the Office did not abuse its discretion, in its October 27, 1998 decision, in denying appellant's request for reconsideration.

Section 10.138(b)(1) 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.<sup>6</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup>

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<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

<sup>4</sup> *Edward E. Olson*, 35 ECAB 1099 (1984).

<sup>5</sup> *Joseph T. Gulla*, *supra* note 3.

<sup>6</sup> 20 C.F.R. § 10.138(b)(1).

<sup>7</sup> 20 C.F.R. § 10.138(b)(2).

By letter dated October 10, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated October 27, 1998, the Office denied appellant's request for further merit review of his claim.

In support of his request for reconsideration, appellant submitted copies of employing establishment notifications of personnel actions, such as pay adjustments, a reassignment, and conversion to career tenure, for the years 1974 to 1979.<sup>8</sup> These documents do not address the issue of causal relationship and therefore are not sufficient to warrant further merit review of appellant's claim.

Appellant also submitted a page from a booklet on asbestosis. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.<sup>9</sup> Therefore, this document is not sufficient to warrant further merit review of appellant's claim.

As appellant did not submit relevant and pertinent evidence not previously considered by the Office, did not show that the Office erroneously applied or interpreted a point of law, and did not advance a point of law or a fact not previously considered by the Office, the Office did not abuse its discretion in denying appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated October 27, September 17 and June 5, 1998 are hereby affirmed.

Dated, Washington, DC  
November 8, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski

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<sup>8</sup> Several of these personnel action notifications were previously of record.

<sup>9</sup> *William C. Bush*, 40 ECAB 1064 (1989).

Alternate Member