

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. MURRAY, JR. and DEPARTMENT OF THE ARMY,
U.S. ARMY CORPS OF ENGINEERS, Vicksburg, MS

*Docket No. 99-2516; Submitted on the Record;
Issued November 29, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained an injury on May 13, 1997 as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On July 25, 1997 appellant, then a 40-year-old lock and dam equipment operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 13, 1997 he injured a disc in his back, which caused numbness and pain in his right leg, while removing gratings to gain access to the machinery pit.¹

In a letter dated October 7, 1997, the Office informed appellant that the information currently in the record was insufficient to support his claim and advised appellant of the medical and factual information required.

By decision dated October 27, 1997, the Office denied appellant's claim on the basis that he had failed to establish fact of injury.

By letter dated October 28, 1997, the Office acknowledged receipt of evidence received after the October 27, 1997 decision. The evidence received from appellant were progress notes for the period July 18, 1997 through September 12, 1997, which were unsigned and contained no physician's name. On July 18, 1997 it was noted that appellant had injured his back on May 13, 1997 and that the next day he was diagnosed as having had a myocardial infarction (MI). The reports also contain a diagnosis of discogenic low back strain with possible L5-S1 right involvement and low back musculoskeletal strain with right leg radiculitis.

¹ This was assigned claim number 16-0304435. Appellant had filed two other claims for stress, which are not part of this appeal. The Office noted that appellant had filed a claim on September 17, 1997 alleging that his heart attack was due to his federal employment which was assigned claim number 16-0206075 and denied on December 24, 1997.

On November 25, 1997 appellant requested a hearing, which was held on November 17, 1998. At the hearing, appellant testified as to how his injury on May 13, 1997 occurred and the medical care he had received due to his injury. Appellant stated that he had been approved for disability retirement on February 8, 1998.

In a decision dated March 2, 1999, the Office hearing representative affirmed the denial of benefits on the basis that appellant had failed to submit any rationalized medical opinion supporting a causal relationship between his May 13, 1997 employment injury and his disability.

On March 10, 1999 appellant requested reconsideration of the denial of his claim and resubmitted the progress notes from July 18 through September 12, 1997 with Dr. Robert Po, an attending Board-certified orthopedic surgeon, listed as the provider and admission and discharge records from Rapides General Hospital for the period May 21 through May 29, 1997 with a diagnosis of recent MI and congestive heart failure.

On June 11, 1999 the Office denied appellant's request for merit review on the basis that he had not submitted new and relevant evidence or raised any legal contentions not previously considered.

Appellant requested reconsideration in a letter dated June 30, 1999 and submitted a June 22, 1999 report from Dr. Po. He noted appellant's employment injury history and that appellant began to have "pain in his back down the left leg with numbness on the right leg" after he lifted gratings at work on May 13, 1997. Next, Dr. Po indicated that a magnetic resonance imaging (MRI) test revealed mild degenerative disc changes at L5-S1 and there was no disc fracture, herniation or dislocation. In conclusion, Dr. Po diagnosed chronic low back strain with residual right femoral cutaneous neuritis.

In a merit decision dated August 3, 1999, the Office denied appellant's claim on the basis that Dr. Po's report failed to contain an opinion of causal relationship linking appellant's disability to his May 13, 1997 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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 the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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

³ *Id.*

The Office, in determining whether an employee actually sustained an injury in the performance of duty, first analyzes whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.⁴ The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

The Board finds that none of the evidence submitted by appellant constitutes a rationalized medical opinion explaining how his May 13, 1997 employment injury caused his back condition.

The mere fact that a physical condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two.⁶ Such causation must be shown by rationalized medical evidence based upon a specific and accurate history of employment incidents or conditions alleged to have caused or exacerbated an injury.⁷

In this case, appellant submitted progress notes dated July 18 through September 12, 1997 and a July 22, 1999 report from Dr. Po in support of his claim that his back condition was due to his May 13, 1997 employment injury. While Dr. Po noted that appellant sustained an injury at work on May 13, 1997, the physician failed to provide any opinion or rationale explaining how appellant's back condition was caused or aggravated by his May 13, 1997 employment injury. Therefore, his opinion is of diminished probative value.⁸

Accordingly, as appellant has failed to submit any rationalized medical evidence relating his back condition to his May 13, 1997 employment injury, appellant has failed to meet his burden of proof.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

Under section 8128(a) of the Act,⁹ 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

⁴ *Id.*

⁵ See 5 U.S.C. § 8101(2); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁶ *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *Lee R. Haywood*, 48 ECAB 145 (1996).

⁸ *Jean Culliton*, 47 ECAB 728 (1996).

⁹ 5 U.S.C. § 8128(a).

set forth in section 10.606(b)(2) of the implementing federal regulations,¹⁰ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(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.¹¹

In the instant case, the Office denied review of appellant’s claim on June 11, 1999 on the grounds that the evidence submitted was insufficient as it was neither signed by a physician nor contained any identification as to who the health care provider was and thus was insufficient to warrant review. To obtain a merit review, appellant was required to provide rationalized medical evidence supporting a causal relationship between his condition and the May 13, 1997 employment injury.

The Board finds that none of the evidence submitted or arguments made constitute a basis for reopening appellant’s claim for further merit consideration. Accordingly, the Office did not abuse its discretion by refusing to reconsider appellant’s claim on its merits in its June 11, 1999 decision.

¹⁰ 20 C.F.R. § 10.606(b) (1999).

¹¹ 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated August 3, June 11 and March 2, 1999 are hereby affirmed.

Dated, Washington, DC
November 29, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member