

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT G. WILLIS and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 99-1320; Submitted on the Record;
Issued September 25, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an injury in the performance of duty as alleged; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On November 15, 1996 appellant filed a claim for an occupational disease, Form CA-2, alleging that he sustained pain in his lower back and numbness in his right leg from delivering "very heavily loaded pos cons of mail." He indicated that he became aware that his back condition was work related on December 30, 1994. On November 14, 1996 appellant was issued a formal notice of removal and as of November 18, 1996 was in a nonduty status.

By letter dated December 12, 1996, the Office informed appellant that additional evidence was necessary to establish his claim, particularly a narrative report from his treating physician explaining how exposure or incidents at work contributed to his condition.

By decision dated February 18, 1997, the Office denied appellant's claim, stating that the evidence of record failed to establish that an injury or disease was sustained as alleged.

By letter dated January 21, 1998, appellant requested reconsideration of the Office's decision and submitted medical certificates from the Department of Veterans Affairs (VA) dated October 5 and 25 and November 2, 1996 describing low back pain he had the past two years and current symptoms of back pain and diagnosing degenerative joint disease and lumbar strain, respectively. He also submitted reports from his treating physician, Dr. Morton Farber, a Board-certified orthopedic surgeon, dated November 10, 1997 and January 15, 1998, a magnetic resonance imaging (MRI) scan dated November 5, 1997 showing, in part, severe facet osteoarthritis at L4-5 causing a Grade I anterior spondylolisthesis of L4 with respect to L5 and a statement dated December 27, 1996. The November 2, 1996 medical certificate stated that appellant's back pain worsened a month ago and that the pain started after he pulled a heavy "pos con." In his November 10, 1997 report, Dr. Farber diagnosed stenosis, noted that appellant was a postal worker with severe back and leg pain, and opined that appellant would jeopardize

his general health by continuing to do heavy work such as lifting mailbags and driving a heavy truck.

In his January 15, 1998 report, Dr. Farber stated that the reports from the VA Hospital which appellant visited in 1996 do not mention the spondylolisthesis at “4, 5 degenerative.” He stated that “they do mention” degenerative joint disease. Dr. Farber stated that appellant had “probably gotten worse.”

In his statement, appellant stated that his pain began in small amounts when he finished working and was required to bend over and then began to occur after the unloading or loading of his vehicle. He stated that the pain worsened when he pulled or pushed anything and if he did any walking.

By decision dated April 27, 1998, the Office denied modification of the February 18, 1997 decision.

By letter dated June 2, 1998, appellant requested reconsideration and submitted a medical report from Dr. Farber dated May 13, 1998 and progress notes from Dr. Farber dated from January 5 through June 15, 1998. In his May 13, 1998 report, Dr. Farber stated that appellant was injured in 1993 and reinjured on October 25, 1996. He stated that appellant was pulling a big load of “pos cons” off a large truck and injured his back again. Dr. Farber diagnosed lumbosacral arthritis and Grade L4-5 spondylolisthesis.

By decision dated July 7, 1998, the Office denied modification of its prior decisions.

By letter dated July 8, 1998, appellant requested reconsideration and submitted a report from Dr. Farber dated July 6, 1998. In the July 6, 1998 report, Dr. Farber stated that appellant was “much worse,” that he had pain down his leg and the MRI scan showed the spondylolisthesis and stenosis at T12 to L2 and L4-5 and S1. He stated that appellant aggravated a preexisting condition and should be considered for compensation.

By letter dated September 28, 1998, appellant also requested reconsideration and submitted a medical report from Dr. Farber dated September 16, 1998. However, it appears from a January 13, 1999 letter that the Office lost appellant’s file and requested a copy of the reconsideration request. It does not appear appellant forwarded a copy of the medical report.

By decision dated February 2, 1999, the Office denied appellant’s request for reconsideration stating that the reconsideration letter “did not include new and relevant evidence....”

The Board finds that appellant did not establish that he sustained an injury in the performance of duty as alleged.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the appellant.¹

None of the medical evidence submitted describes the specific factors of employment which contributed to appellant's back condition.² The November 2, 1996 medical certificate from VA referred to a traumatic incident when it stated that a month earlier appellant's back pain worsened after he pulled a heavy "pos con." However, because appellant filed an occupational claim on November 15, 1996 due to a back condition he became aware was work related on December 30, 1994, to establish his claim, appellant must present evidence relating factors of employment from December 1994 and continuing which caused his back condition.

In his November 10, 1997 report, Dr. Farber diagnosed stenosis and stated that continued heavy lifting was contraindicated by appellant's back condition, but did not address what caused appellant's stenosis. In his May 13, 1998 report, he referred to a traumatic incident which occurred at work on October 25, 1996 when appellant pulled a big load of "pos cons" off a large truck and reinjured his back. He diagnosed lumbosacral arthritis and Grade L4-5 spondylolisthesis but did not specifically relate appellant's diagnosed condition to the pulling incident. In his January 5, 1998 report, Dr. Farber stated that VA diagnosed degenerative joint disease and that appellant's condition had probably worsened since those 1996 records. He, however, did not relate appellant's back condition to his work. In his July 6, 1998 report, Dr. Farber opined that appellant was "much worse," that he had pain down his leg and the MRI scan showed spondylolisthesis and stenosis at T12 to L2 and L4-5 and S1. He stated that appellant aggravated a preexisting condition but did not explain how that aggravation occurred. Although the Office informed appellant of the evidence necessary to establish his claim, appellant did not submit that evidence. He therefore has failed to establish that his back condition was sustained in the performance of duty.

The Board finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Workers' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or shift, whereas an occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; see 20 C.F.R. §§ 10.5(a)(15), (16).

(3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁴ If reconsideration is granted, the case is reopened and the case is reviewed on the merits.⁵

In the present case, in support of his request for reconsideration, appellant submitted Dr. Farber's September 16, 1998 report. However, the record establishes that the Office did not consider this evidence in the February 2, 1999 decision. For this reason, the February 2, 1999 decision will be set aside and the case remanded to the Office for an appropriate review.

The decision of the Office of Workers' Compensation Programs dated February 2, 1999 is set aside and remanded for further action in conformance with this decision and the July 7 and April 27, 1998 decisions are hereby affirmed.

Dated, Washington, DC
September 25, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ Section 10.606(b)(2)(i-iii).

⁴ Section 100.608(a).

⁵ *Id.*