

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID B. HALLAND and DEPARTMENT OF THE AIR FORCE,  
McCHORD AIR FORCE BASE, WA

*Docket No. 99-1983; Submitted on the Record;  
Issued September 1, 2000*

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DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on March 10, 1998 causally related to his February 28, 1975 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On March 2, 1975 appellant, then a 27-year-old meatcutter, filed a claim alleging that on February 28, 1975 he injured his back in the performance of duty. The Office accepted appellant's claim for low back strain and a possible herniated disc. Appellant initially resumed his regular employment but sustained a recurrence of disability on September 11, 1976, following which he returned to work as a work controller. By decisions dated March 17, 1978 and October 20, 1981, the Office found that appellant's actual earnings as a work controller fairly and reasonably represented his wage-earning capacity.

On April 10, 1985 the Office referred appellant to Dr. Kenneth D. Sawyer, an orthopedic surgeon, Dr. Robert M. Chambers, a neurosurgeon and Giorgio S. Turella, a neurologist, for a second opinion evaluation. In a report dated May 15, 1985, Drs. Sawyer, Chambers and Turella diagnosed low back strain due to appellant's February 28, 1975 employment injury. They opined that appellant had a five percent residual impairment due to his back condition. Drs. Sawyer, Chambers and Turella further indicated that the "condition appears to be fixed and further medical care is not considered necessary."

In a letter received by the Office on November 29, 1985, appellant stated that effective October 28, 1985 he had obtained another federal position "at compatible pay to [what] I was receiving at the time of my disabling injury." The Office administratively closed and archived appellant's case.

On September 30, 1998 appellant filed a notice of recurrence of disability due to his February 28, 1975 employment injury. Appellant did not stop work. On the reverse side of the

claim form, appellant's supervisor indicated that he fulfilled the regular employment duties required for his current position.

By letter dated November 17, 1998, the Office requested additional factual and medical information from appellant.

In a letter dated December 11, 1998, appellant related that he sought reimbursement for medical expenses. He noted that he had received no compensation from the Office since 1985.

By decision dated January 27, 1999, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that he sustained a recurrence of disability due to his accepted employment injury.

In a letter dated February 25, 1999, appellant requested reconsideration of his claim. By decision dated March 4, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant a merit review of the prior decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained a recurrence of disability causally related to his February 28, 1975 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>1</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>2</sup>

In the instant case, appellant maintained that he was entitled to reimbursement from 1985 through the present for medical expenses related to treatment of his accepted back condition. In order to be entitled to reimbursement of medical expenses, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>3</sup> The medical evidence in this case lacks a well-reasoned narrative from appellant's attending physician relating appellant's current condition and need for medical treatment to the February 28, 1975 employment injury.

In support of his claim, appellant submitted the 1985 report from Drs. Sawyer, Chambers and Turella. As these physicians found that appellant required no further medical treatment for

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<sup>1</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>2</sup> *Id.*

<sup>3</sup> *Bertha L. Arnold*, 38 ECAB 282 (1986).

his accepted employment injury, their report is insufficient to support appellant's claim for medical expenses.

Appellant further submitted a report dated October 28, 1998 from Dr. M.T. Haynes, who is Board-certified in family practice. Dr. Haynes related:

“[Appellant] has continued to have low back pain on and off since an injury in 1975. His back is still likely to give him problems periodically. [Appellant's] previous diagnosis of chronic lumbosacral strain and fibromyalgia in his back still persists and [I] feel that it will likely persist as long as he tries to have any kind of meaningful activity.”

Dr. Haynes did not discuss the history of appellant's employment injury, list any findings on physical examination, or provide any medical rationale in support of his findings. Thus, his opinion is of diminished probative value.<sup>4</sup> Dr. Haynes further did not specifically address whether appellant required further medical treatment due to the effects of his employment injury.<sup>5</sup>

As appellant did not submit any probative medical evidence in support of his claim, he has not established that he sustained a recurrence of disability or that he incurred medical expenses after 1985 due to residuals of his original injury.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.

Section 10.606 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 specific point of law; or

“(2) advancing a relevant legal argument not previously considered by the Office; or

“(3) submitting relevant and pertinent new evidence not previously considered by the Office.”<sup>6</sup>

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<sup>4</sup> Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Judith J. Montage*, 48 ECAB 292 (1997).

<sup>5</sup> The Board notes that the Office did not accept that appellant sustained fibromyalgia due to his employment injury and thus it remains appellant's burden to establish that the condition is related to his employment injury through the submission of rationalized medical evidence.

<sup>6</sup> 20 C.F.R. § 10.606(b)(2) (1999).

Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.<sup>7</sup>

In support of his request for reconsideration, appellant submitted a position description for his current job of motor vehicle operator. Appellant also submitted statements from his coworkers supporting that he worked safely and could fulfill the physical requirements of his position. However, as discussed above, evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> The pertinent inquiry in the present case is whether the medical evidence supports appellant's claim that he is entitled to reimbursement of medical expenses for treatment incurred due to the effects of his accepted employment injury. As the issue is medical in nature, it can only be resolved by the submission of medical evidence.<sup>9</sup>

Abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>10</sup> Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated March 4, 1999 and January 27, 1999 are hereby affirmed.

Dated, Washington, D.C.  
September 1, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>8</sup> See *Dominic E. Coppo*, 44 ECAB 484 (1993).

<sup>9</sup> *Ronald M. Cokes*, 46 ECAB 967 (1995).

<sup>10</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).