

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES McKITTRICK and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Des Plaines, IL

*Docket No. 00-2021; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On October 1, 1997 appellant, then a 52-year-old airway transportation systems specialist, filed a claim alleging that on December 13, 1994 he suffered a stroke. Appellant stopped work from October 13, 1994 to May 5, 1995.

In an October 22, 1997 report, Dr. Edward Malters, Board-certified in internal medicine, indicated that appellant suffered from a stroke. He checked the box "no" indicating he did not believe that appellant's condition was caused or aggravated by an employment activity. The doctor described his findings as "vertebral artery aneurysm, which had ruptured." Dr. Malters indicated that appellant could return to light duty on April 24, 1995.

By letter dated October 28, 1997, the Office advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 21 days to submit the requested evidence.

In a November 10, 1997 report, Dr. Dan Heffez, Board-certified in neurological surgery, checked the box "yes" indicating he believed that appellant's condition was caused or aggravated by an employment activity. He wrote out "typically caused by minor rotatory injury neck" and stated his findings as "dissecting aneurysm of right vertebral artery." Dr. Heffez advised that appellant could return to regular work on May 13, 1995.

In a November 12, 1997 statement, appellant indicated that on December 13, 1994 he was working the midnight shift. He started a government vehicle to drive out to the radar facility to assist another technician working on the air traffic control beacon radar, when he developed a ruptured vertebral artery aneurysm. Appellant also indicated that, prior to the incident, he was

cleaning up a storage shed that was very dusty. He indicated that the dust he was breathing was contaminated with rat poison and mice particles. Additionally, he noted that two other co-workers had been hospitalized at a young age for serious vascular conditions.

Appellant also provided copies of the operative reports and test results from his procedures from the date of incident. However, none of these reports discussed the relationship between appellant's employment and his injury on December 13, 1994.

In a December 5, 1997 merit decision, the Office denied appellant's claim for compensation, as appellant had not provided sufficient medical evidence to establish that his condition was caused by the injury as alleged.

In a December 15, 1997 attending physician's report (CA-20), Dr. Bonita Alexander, Board-certified in physical medicine and rehabilitation, checked the box "yes" indicating she believed that appellant's condition was caused or aggravated by an employment activity and wrote out "stress and elevation of blood pressure is a contributing factor to stroke. To what degree cannot be fully estimated." She diagnosed aneurysm, cerebral.

In a letter received by the Office on January 5, 1998, appellant requested a hearing.

Appellant was advised that a hearing was scheduled for July 28, 1998.

In a November 6, 1998 decision, the hearing representative affirmed the Office's December 5, 1997 decision finding that fact of injury had not been established.

In a letter received by the Office on August 17, 1999, appellant requested reconsideration. In his request, appellant stated that reconsideration was in order due to recent events published in the newspapers about compensation for radiation exposure. He alleged that the hearing representative would not allow him to introduce evidence that he had worked with microwave radiation due to the fact that he did not mention it in his primary claim. Appellant did not provide any additional information with his request.

In a March 13, 2000 decision, the Office denied merit review of appellant's request for reconsideration on the grounds that the evidence submitted was repetitious.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his appeal with the Board on April 17, 2000, the Board lacks jurisdiction to review the Office's most recent merit decision dated November 6, 1998. Consequently, the only decision properly before the Board is the Office's March 13, 2000 decision denying appellant's request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2) (1998); 20 C.F.R. § 10.607(a) (1999).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (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) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

In the present case, relevant and pertinent new medical evidence did not accompany appellant's request for reconsideration. This is important since the underlying issue in the claim, whether appellant's stroke that he suffered on December 13, 1994 was related to his employment, is essentially medical in nature.

In its March 13, 2000 decision, the Office found that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. Appellant argued, “reconsideration was in order due to recent events published in the newspapers about compensation for radiation exposure.” However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing a causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.³ Appellant also alleged that the hearing representative would not allow him to introduce evidence that he worked with microwave radiation as he did not mention it in his primary claim. However, the record

² 20 C.F.R. § 10.608(b) (1999).

³ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

reflects that appellant requested that he provide a document of unsatisfactory condition report which he filed with the employing establishment and he was advised by the hearing representative that evidence of radiation would not be allowed. Additionally, appellant was advised by the hearing representative that the issue in the case was how his employment conditions caused or contributed to his aneurysm, an issue which is medical in nature. Appellant did not establish the relevance pertaining to the microwave radiation. Appellant did not supply any medical reports to provide relevant or pertinent new evidence, nor did he advance a relevant legal argument that had not been previously considered by the Office. Additionally, appellant did not argue that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a merit review of the merits of the claim based upon any of the above noted requirements under section 10.606(b)(2) (1999). Accordingly, the Board finds that the Office properly denied appellant's August 17, 1999 request for reconsideration.⁴

The decision of the Office of Workers' Compensation Programs dated March 13, 2000 is hereby affirmed.

Dated, Washington, DC
August 21, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ The Board notes that subsequent to the Office's March 13, 2000 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999); *see* 20 C.F.R. § 501.2(c).