

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEAN T. ALBRECHT and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Clearwater, FL

*Docket No. 01-148; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that his conjunctivitis of the left eye was sustained in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim.

On October 13, 1999 appellant, then a 38-year-old modified distribution clerk, filed a claim that "dirt/dust in left eye caused infection/red eye" on October 3, 1999. Appellant described his exposure to dust at work, and noted that another employee who worked on October 3, 1999 also had to seek treatment for his eye.

By decision dated December 6, 1999, the Office found that appellant had not established that he contracted a contagious eye disease at work.

Appellant requested a hearing, which was held on April 12, 2000. By decision dated June 27, 2000, an Office hearing representative found that there was no reasoned medical evidence establishing that appellant's conjunctivitis was due to exposure to a coworker with contagious conjunctivitis.

By letter dated July 28, 2000, appellant requested reconsideration. By decision dated August 25, 2000, the Office found that appellant's personal statement was immaterial and thus insufficient to warrant review of its prior decision.

The Board finds that appellant has not established that his conjunctivitis is causally related to his employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests

itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹

The fact that the etiology of a disease condition is unknown or obscure does not shift the burden of proof to the Office to disprove an employment relationship. Neither does the absence of a known etiology relieve appellant of the burden of establishing a causal relationship by the weight of the evidence, which includes affirmative medical opinion based on the material facts with supporting rationale.²

In this case, no medical evidence relates appellant's conjunctivitis to dust or dirt, as indicated in his original claim. Appellant later contended that his conjunctivitis was related to his exposure to a coworker with conjunctivitis, but the employing establishment reported that the coworker appellant named as the source of his eye disease did not work on October 3, 1999, the date that appellant indicated he contracted his conjunctivitis.

Appellant's attending physician, Dr. William Taldone, stated in an October 30, 1999 report that appellant had a highly contagious viral disease affecting his left eye. Dr. Taldone concluded: "I believe that you obtained this infection at work as other coworkers came down with conjunctivitis." This is not an accurate history, as only one coworker had an eye condition. It has not been established that this coworker had the same eye condition that appellant contracted. The evidence, though not conclusive, suggests that this coworker had a different, noncontagious, form of conjunctivitis.

As noted above, the Office need not disprove appellant's claim. Causal relation between the disabling disease and the employment must be established in each case by affirmative evidence. As long as the Office properly determines that the evidence fails to establish the requisite causal relation, its obligation under the Federal Employees' Compensation Act has been met.³ The Office properly found that appellant has not established that his conjunctivitis of the left eye was sustained in the performance of duty.

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

¹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

² *Judith J. Montage*, 48 ECAB 292 (1997).

³ *William J. Murray*, 35 ECAB 606 (1984).

Section 8128(a) of the 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 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), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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 reviewing the merits of the claim.

Appellant’s July 28, 2000 request for reconsideration was not accompanied by any new evidence. It also does not show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered by the Office. The Office properly refused to reopen appellant’s case for further review of the merits of his claim.

The decisions of the Office of Workers’ Compensation Programs, dated August 25 and June 27, 2000, and December 6, 1999, are affirmed.

Dated, Washington, DC
August 6, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member