

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDY PHILLIPS and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Atlanta, GA

*Docket No. 00-1709; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met his burden of proof in establishing that he had any disability from July 20, 1999 to January 1, 2000 causally related to the accepted work injuries; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

On April 26, 1999 appellant, then a 30-year-old clerk, filed a traumatic injury claim, alleging that on April 22, 1999 he sustained a cervical strain and back spasms, which were caused by the repetitive motions of his job duties.¹ Also on April 26, 1999 he filed a recurrence of disability claim, stating that his "back started to spasm after 3.5 days of filing [forms] the entire day." The Office determined that the April 26, 1999 injury was a new condition, not a recurrence of appellant's January 27, 1999 injury and treated the case as an occupational disease claim.²

In support of his claim, appellant submitted medical reports dated May 25 and 26, 1999 from Dr. Simon Portee, an internist, who diagnosed a cervical and lumbar sprain/strain and indicated with a checkmark "yes" that the condition was caused or aggravated by employment activity noting "continuous repetitive motion from filing." Dr. Portee's medical report of May 17, 1999 noted that appellant presented on May 5, 1999 with upper back and neck pain with spasms and stated that his condition developed as a result of filing for three weeks, eight hours a day.

Based on a December 2, 1999 report from Dr. Portee, the Office issued a decision on December 13, 1999 accepting appellant's claim for cervical, thoracic and lumbar strains.

¹ The Office accepted appellant's claim for cervical, thoracic and lumbar strains.

² In a decision dated August 21, 1999, the Office denied appellant's claim for continuation of pay. Appellant has not appealed this decision.

On January 11, 2000 appellant filed claims for a schedule award and wage-loss compensation from July 20, 1999 to January 1, 2000. He submitted a description of temporary work for private employers from September 1999 to January 2000.³

By decision dated February 25, 2000, the Office denied appellant's claim for wage-loss compensation on the grounds that the medical evidence submitted was insufficient to establish that appellant's continuing condition or disability was caused by his employment.

In a March 2, 2000 letter, appellant requested reconsideration and submitted a narrative statement as well as a May 17, 1999 report from Dr. Portee.

By decision dated March 9, 2000, the Office denied appellant's request on the grounds that the evidence submitted was repetitious and insufficient to warrant review of the prior decision.

The Board finds that appellant has failed to establish that his condition during the claimed period of disability was causally related to employment factors of his accepted employment injuries.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁴

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 claimant'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 claimant.⁵

In this case, the Office accepted appellant's claim for cervical, thoracic and lumbar strains. However, the medical evidence submitted in support of his wage-loss claim from July 20, 1999 to January 1, 2000 is insufficient to establish disability or aggravation of

³ Appellant indicated that he did not return to work at the employing establishment because the employing establishment did not have a job that satisfied the work restrictions established by his physician. In a letter dated February 28, 2000, the employing establishment confirmed that it was unable to identify a position that would be suitable for an individual with appellant's degree of disability and noted that his appointment as a temporary intermittent employee ended September 25, 1999. However, appellant did return to work after his January 27, 1999 injury and indicated that he was back at work filing when he experienced the April 22, 1999 injury.

⁴ See *Nicolea Bruso*, 33 ECAB 1138 (1982). Regarding a claimant's burden of proof in initially establishing an occupational disease claim, see *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

appellant's back condition. Appellant's treating physician, Dr. Portee noted in his November 24, 1999 report, appellant's history of cervical, thoracic and lumbar pain resulting from his filing duties at the employing establishment beginning April 19, 1999. He stated that appellant was still experiencing pain in his thoracic area with intermittent neck stiffness. Dr. Portee diagnosed residual symptoms of neck and back strain, and fibromyalgia syndrome. He recommended restrictions of no lifting more than 30 pounds and no prolonged use of arms in strenuous activities.

However, Dr. Portee did not, in this report or in others, specifically address the causal relationship between appellant's accepted conditions and his disability from July 20, 1999 to January 1, 2000. His reports do not include a rationalized opinion regarding the causal relationship between appellant's accepted conditions and the factors of employment believed to have caused or contributed to such condition during this period.⁶ Instead, Dr. Portee couched his opinion in speculative terms and did not refer to any particular employment factors as causing appellant's disability.⁷ Therefore, his reports are insufficient to meet appellant's burden of proof.⁸

The remainder of the medical evidence fails to provide a specific opinion on the causal relationship between the April 22, 1999 employment injury and the claimed period of disability. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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

Under section 8128(a) of the Federal Employees' Compensation 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 set forth in section 10.606(b)(2) of the implementing federal regulation,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 [the Office] erroneously applied or interpreted a specific point of law; or

(ii) Advances a relevant legal argument not previously considered by the Office;
or

⁶ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.)

⁸ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b).

(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

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 this case, appellant submitted a narrative statement with his request for reconsideration. This statement reiterated information already in the record. Appellant requested that the Office consider a medical report dated May 17, 1999 from Dr. Portee. However, this report was previously considered by the Office.¹² He neither showed that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office, nor submitted relevant and pertinent evidence not previously considered by the Office.¹³ Therefore, appellant failed to meet any of the criteria necessary to require the Office to reopen his case for a merit review.

The decisions of the Office of Workers’ Compensation Programs dated March 9 and February 25, 2000 are hereby affirmed.

Dated, Washington, DC
June 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

¹¹ 20 C.F.R. § 10.608(b).

¹² See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

¹³ *Supra* note 9.