

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP M. ANDRUCCI and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL BASE, Norfolk, VA

*Docket No. 00-1274; Submitted on the Record;
Issued May 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury in the performance of duty on June 1, 1998, as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on June 1, 1998.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be established whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹

On June 29, 1999 appellant, then a 53-year-old mason, filed an occupational disease claim alleging that in June 1998 he sustained a ruptured disc when he felt a sudden and increasing pain while delivering supplies.²

By decision dated July 29, 1999, the Office denied appellant's claim for an injury on June 1, 1998 on the grounds that the evidence of record did not establish that he sustained a medical condition on that date causally related to his employment.

¹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

² The record on appeal is a consolidated case record containing the consolidated into one case, the records for Office file number 25-364496 for an accepted acute lumbar strain and herniated nucleus pulposus sustained on June 5, 1990, Office file number 25-543664 for the claimed injury on June 1, 1998 and Office file number 25-550537 for an accepted back and hip injury on October 20, 1999.

By letter dated November 30, 1999, appellant requested reconsideration and submitted additional evidence.

By decision dated January 13, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

In reports dated November 13 and December 4, 1998, physicians diagnosed chronic low back pain and noted that appellant had undergone two back operations. However, the physicians did not provide an opinion as to the cause of appellant's condition. Therefore, these reports do not establish that appellant sustained a work-related injury on June 1, 1998.

In a report dated May 21, 1999, Dr. Harold F. Young, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination and noted that he had undergone back surgery in July 1995. He related that appellant was complaining of increased low back pain and that a magnetic resonance imaging scan revealed a disc bulge at L4-5. However, Dr. Young did not relate the disc bulge to appellant's work incident on June 1, 1998. Therefore, this report does not establish that appellant sustained an employment-related injury on June 1, 1998.

As appellant did not provide rationalized medical evidence establishing that he sustained a specific medical condition on June 1, 1998 causally related to factors of his employment, the Office properly denied his claim.

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

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 evidence not previously considered by the Office.³ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of his request for reconsideration, appellant submitted a report dated July 28, 1999 in which Dr. Young stated that appellant had a herniated disc at L4-5. He stated, "The work-related injury [appellant] suffered on June 5, 1990 and the subsequent lumbar surgeries predisposed [appellant] for reinjury." However, Dr. Young did not explain how the herniated disc was causally related to the claimed injury on June 1, 1998. This report was essentially duplicative of his prior report and does not constitute relevant and pertinent evidence not previously considered by the Office.

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office, the Office was within its discretion in denying appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated January 13, 2000 and July 29, 1999 are affirmed.

Dated, Washington, DC
May 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member