U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL T. CARROLL and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Ronkokoma, NY

Docket No. 01-571; Submitted on the Record;
Issued October 24, 2001

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of disability on September 30, 1999 causally related to his December 22, 1996 injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On January 7, 1997 appellant, then a 32-year-old air traffic controller, filed an occupational disease claim alleging he sustained the condition of irritable bowel syndrome while in the performance of duty. On August 5, 1997 the Office accepted appellant's claim for irritable colon.

On October 4, 1999 appellant filed a notice of recurrence of disability alleging that on September 30, 1999, he suffered from the same affliction as in December 1996 because the symptoms were identical. Appellant stopped work on September 30, 1999 and returned to work on October 6, 1999.

On November 1, 1999 the Office advised appellant of the type of medical evidence needed to establish his recurrence claim.

By compensation order dated January 25, 2000, the Office rejected appellant's claim on the grounds that he failed to establish that his claimed condition was related to his December 22, 1996 employment injury.

By letter dated February 3, 2000, the employing establishment indicated that appellant had returned to his full range of duties on January 5, 1997.

In a February 1, 2000 report, Dr. Louise P. Walk, a gastroenterologist, indicated that appellant was last seen on October 5, 1999 for a problem with irritable bowel syndrome. Dr. Walk stated that she recommended appellant undergo a fiberoptic gastroscopy and colonoscopy, which were completed on November 15, 1999. Dr. Walk found, upon examination

of the upper gastrointestinal tract, that appellant had a hiatus hernia, moderate gastroesophageal reflux disease and moderate antritis. She opined that the findings were consistent with irritable bowel syndrome, bleeding from internal hemorrhoids and gastroesophageal reflux disease.

In a December 1, 1999 medical treatment status report, a Dr. M. Jordan indicated that appellant was given a medical clearance to return to work with special consideration for irritable bowel syndrome.

In a July 7, 2000 request for reconsideration, appellant stated that he did not receive the Office's November 1, 1999 letter until January 4, 2000. He noted that the reason for his denial was due to the Office's untimely mailing of its request for additional information. He further asserted that the report from Dr. Walk should also be considered.

In a July 17, 2000 decision, the Office denied merit review of appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant a review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability September 30 through October 5, 1999.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[1] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[2] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.[3]

In this case, appellant did not submit any medical evidence that his present condition was causally related to his December 22, 1996 employment injury. Appellant did not submit a medical report in which his treating physician explained why his current condition would be related to the December 22, 1996 accepted injury or to work factors. Accordingly, the Board finds that appellant has not met his burden of proof in this case.

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

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[1] *Lourdes Davila,* 45 ECAB 139 (1993); *Dominic M. DeScala,* 37 ECAB 369, 372 (1986); *Bobby Melton,* 33 ECAB 1305, 1308-09 (1982).

[2] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[3] *Ausberto Guzman,* 25 ECAB 362 (1974).

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.[4]

In this 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 irritable bowel syndrome was related to his accepted employment injury of December 22, 1996, is essentially medical in nature.

Appellant submitted a medical report from Dr. Walk. In her February 1, 2000 report, Dr. Walk stated that she had previously seen appellant for a problem with irritable bowel syndrome and that his last visit was October 5, 1999. Although Dr. Walk provided a diagnosis, she failed to discuss causal relationship or offer a rationalized medical opinion to show that appellant's condition was causally related to his accepted work-related injury or to any factors of appellant's employment. For instance Dr. Walk did not indicate that the symptoms of October 5, 1999 were related to the accepted condition of December 22, 1996 or to any employment-related duties. Medical reports that merely state appellant's physical findings are of limited probative value.[5]

Appellant also provided a note from Dr. Jordan. However, this form was insufficient to support his claim because no discussion or diagnosis was made indicating that appellant's condition was causally related to his employment.[6]

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[4] 20 C.F.R. § 10.608(b) (1999).

[5] 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; *see Charles E. Burke,* 47 ECAB 185 (1995).

[6] *Id.*

Additionally, appellant argued that the Office's letter dated November 1, 1999 was not mailed until December 30, 1999. However, this argument has no validity because the issue is medical in nature.[7]

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 his claim based on any of the requirements of section 10.606(b)(2) (1999).[8]

The July 17 and January 25, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

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[7] *See John F. Critz,* 44 ECAB 788 (1993) (reopening of a claim not required where a legal contention does not have a reasonable color of validity.); *see also Constance G. Mills,* 40 ECAB 317 (1988).

[8] The Board notes that subsequent to the Office's July 17, 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 may 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).