

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD E. BACON and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 01-2142; Submitted on the Record;
Issued August 7, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied medical benefits for appellant's hypertension; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for further merit review of the denied medical benefits under 5 U.S.C. § 8128(a).

In this case, the Office accepted the conditions of strain left knee, torn medial meniscus, chondritis, post-traumatic arthritis left knee and a consequential injury of fracture right forearm as a result of a work-related incident on April 23, 1987.¹ The Office authorized several surgeries, including a total knee replacement in 1997, from which appellant suffered a staph infection as a result. The Office's denial of medical benefits in this case stems from appellant's total knee replacement surgery he underwent in 1997 and the resultant staph infection. The record reflects that when appellant was experiencing the staph infection, he additionally suffered hypertension and was placed on Verapamil, an antihypertensive medication.

In a letter dated November 6, 2000, appellant related that he never had high blood pressure prior to the staph infection he suffered from his 1997, second knee replacement surgery. Appellant stated that as a result of the staph infection, he has had to take Verapamil ever since to control his high blood pressure. On appeal he seeks reimbursement for the resulting medical expense.

In a decision dated March 14, 2001, the Office found that the medical evidence was insufficient to establish that appellant's condition, hypertension and resulting use of Verapamil, an antihypertensive medication, was caused by his April 23, 1987 work injury. The Office, therefore, denied authorization for appellant's hypertension medication, Verapamil.

¹ Other accepted conditions include osteoarthritis and tendinitis of the left thumb.

In a letter dated April 13, 2001, appellant requested reconsideration. Evidence previously of record was submitted.

In a May 9, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative and immaterial and, therefore, insufficient to warrant review of the prior decision.

The Board finds that the Office did not abuse its discretion in denying medical benefits for appellant's hypertension condition.

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Federal Employees' Compensation Act.² The Office is required by section 8103 to provide all medical care necessary on account of an employment injury. The Office, however, has discretion to determine whether the medical treatment that is recommended or being given fulfills the purposes of section 8103.

In this case, the Office, in a letter dated December 20, 2000, requested justification regarding the payment of appellant's blood pressure medicine, Verapamil. Specifically, the Office advised him that in order for payment of Verapamil to be considered, medical documentation from his treating physician showing the relationship between his high blood pressure and the April 23, 1987 work-related injury was necessary. Specifically, appellant would have to show a causal relation from the staph infection following the October 1997 knee replacement surgery and his current condition of hypertension.

It appears from the medical record that appellant's prosthetic knee was chronically infected and he had to continue taking antibiotics to prevent another staph infection. However, although the record supports that he experienced an increase in his blood pressure following the staph infection, the record is devoid of a medical opinion linking his increase in blood pressure to the 1997 staph infection or explaining why appellant is still experiencing high blood pressure.

A review of the record reveals that in a July 6, 1998 progress note, Dr. Joseph D. Chenger, a Board-certified orthopedic surgeon and appellant's treating physician, advised that appellant appeared to be static and that there were no signs of recurrence of the infection of his knee. Antibiotics were continued.

In a September 14, 1998 medical report, Dr. Curtis J. Hagenau, a Board-certified neurologist, advised that appellant's neurologic medications, as they related to the knee surgery and subsequent knee infection, had resolved and appellant was back to baseline. He further advised that appellant was on Verapamil, as an antihypertensive medication and that he would be the primary care physician to address that particular medicine. The record, however, contains no further reports from Dr. Hagenau.

In a November 2, 1998 report, Dr. Chenger advised that appellant was started on Verapamil for hypertension, which he developed during his last surgery with his left knee

² 5 U.S.C. § 8101(3); *see* 20 C.F.R. § 10.310(a) (1999).

infection. He advised that appellant's hypertension was temporarily related to the infection in his knee and has persisted since then. Dr. Chenger opined that although it is difficult to be certain as to the exact mechanism, it certainly seems to be temporarily related. Although he provides a temporary causal relationship between appellant's hypertension and the staph infection in his knee, he failed to provide any medical rationale for that opinion and failed to provide an explanation for why appellant's hypertension and need for medication still persists.

In a January 5, 2001 report, Dr. Ken Demirjian, a Board-certified family practitioner, advised that appellant underwent a second knee replacement surgery in October 1997 and that the day before Thanksgiving in November 1997, appellant was seen in the emergency room and subsequently diagnosed with a very severe staph infection which occurred unfortunately as a complication from the second knee replacement surgery. Dr. Demirjian stated: "Secondary to this infection he became hypertensive and at that time it was determined that the hypertension was brought on by the staph infection and he has been on Verapamil ever since then." Dr. Demirjian, however, offered no medical rationale or explanation as to how or why appellant's hypertension and resulting use of Verapamil were due to the injury of April 23, 1987 and he did not explain why appellant's current usage of Verapamil was necessary more than three years after his second knee replacement surgery and staph infection.³

An Office medical adviser reviewed Dr. Demirjian's January 5, 2001 report and stated "[t]hat there was no quoted evidence except the statement by Dr. Demirjian that the infection caused the hypertension hence no proof that there was any relation to the accepted condition to his hypertension." The Office medical adviser, therefore, opined that the Verapamil was not covered as there was no medical evidence linking appellant's hypertensive condition to the accepted condition.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁴ The Office did not abuse its discretion in determining that the medical evidence did not support justification for payment of the Verapamil being used to treat appellant's hypertension.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration of its March 14, 2001 decision.

Under section 8128(a) of the Act,⁵ 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 regulations,⁶ which provides that a

³ See *Linda L. Mendenhall*, 41 ECAB 532 (1990) in which the Board noted the probative value of a medical opinion may be diminished by the length of time between an employment incident and physician's opinion on the origin of the condition being treated.

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b) (1999).

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

“(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.⁷ Stated differently, when a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁸

In support of his request for reconsideration, appellant submitted a copy of the Office’s March 14, 2001 decision and duplicative copies of progress notes from his physicians from 1996 to 1998, which contained listings of his blood pressure readings from both before and after the staph infection. As this information was previously of record and does not contain a well-rationalized medical opinion linking appellant’s hypertension and need for Verapamil to the staph infection of 1997, this evidence is irrelevant to the issue of this case and is considered cumulative evidence. As appellant’s submissions did not satisfy either of the criteria set forth above, the Office properly denied merit review of its prior decision.

⁷ 20 C.F.R. § 10.608(b) (1999).

⁸ *Id.*; see also *John E. Watson*, 44 ECAB 612, 614 (1993).

The decisions of the Office of Workers' Compensation Programs dated May 9 and March 14, 2001 are hereby affirmed.

Dated, Washington, DC
August 7, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member