

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK A. RANGE and DEPARTMENT OF AGRICULTURE,
MEAT POULTRY INSPECTION SERVICE, Klamath Falls, OR

*Docket No. 02-466; Submitted on the Record;
Issued August 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he sustained a left elbow injury in the performance of duty on March 17, 2000; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 53-year-old food inspector, filed a claim for a traumatic injury on March 21, 2000, alleging that he sustained a torn left tendon in his elbow in the performance of duty on March 17, 2000.

By letter dated December 6, 2000, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any evidence.

By decision dated January 17, 2001, the Office denied appellant's claim, finding that he failed to establish fact of injury. The Office stated that it had requested additional factual and medical evidence by letter dated December 6, 2000, but that appellant had failed to respond to this request.

By letter dated January 31, 2001, appellant requested reconsideration. In support of his claim, appellant submitted a December 5, 2000 report from Dr. Constance M. Serra, a Board-certified family practitioner. This report stated findings on examination and indicated that appellant had complaints of left elbow pain, but did not contain factual or probative, rationalized medical evidence relating his complaints of pain to the alleged March 17, 2000 work incident.

By decision dated March 7, 2001, the Office denied reconsideration.

By letter dated June 20, 2001, appellant again requested reconsideration. Appellant submitted reports dated June 8 and June 11, 2001 from Dr. John D. Santaniello, a Board-certified orthopedic surgeon, who stated findings on examination, noted appellant's history of injury and diagnosed lateral epicondylitis left elbow, improved.

By decision dated September 5, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant has failed to establish that he sustained a left elbow injury in the performance of duty on March 17, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined 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.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁶

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

incident caused a personal injury generally can be established by medical evidence,⁷ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on March 17, 2000 caused a personal injury and resultant disability.

Appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that his March 17, 2000 employment incident caused a personal injury or resultant disability. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. Appellant submitted reports from Drs. Serra and Santaniello which stated findings on examination and generally attributed his complaints of left elbow pain to the March 17, 2000 employment incident, but these did not contain a rationalized medical opinion demonstrating that appellant's diagnosed condition was causally related to his March 17, 2000 employment injury. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to describe or explain the medical process through which the March 17, 2000 work accident would have caused the claimed injury. Accordingly, as appellant failed to submit any probative medical evidence establishing that he sustained a left elbow injury in the performance of duty, the Office properly denied appellant's claim for compensation.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, 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 evidence not previously considered by the Office.¹⁰ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law and he has not advanced a relevant legal argument not previously considered by the Office and he has not submitted relevant and pertinent evidence not previously considered by the Office. Dr. Santaniello's June 8 and 11, 2000 reports did not contain a probative, rationalized medical opinion regarding whether appellant's diagnosed left elbow

⁷ See *John J. Carlone*, 41 ECAB 353 (1989).

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.607(b)(1). See generally 5 U.S.C. § 8128(a).

¹¹ *Howard A. Williams*, 45 ECAB 853 (1994).

condition was causally related to his March 17, 2000 employment incident, and are therefore not relevant and pertinent. Additionally, appellant's June 20, 2001 letter failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.¹² The Board therefore affirms the Office's September 5, 2001 decision.

The decisions of the Office of Workers' Compensation Programs dated September 5, March 7 and January 17, 2001 are affirmed.

Dated, Washington, DC
August 9, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

¹² On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).