U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELVYN KLOOR and DEPARTMENT OF THE ARMY, OPERATIONAL TEST COMMAND, Fort Huachuca, AZ

Docket No. 02-1594; Submitted on the Record;
Issued December 4, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

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

On May 21, 2001 appellant, then a 59-year-old intelligence specialist, filed a notice of occupational disease alleging that he sustained injury to his left shoulder, neck, left side, lower and left arm when he was directed to carry a briefing easel from one trailer to another trailer, a distance of approximately 500 feet. Appellant indicated on his CA-2 form that he had not stopped work.

The record reflects that appellant served in the Navy from June 25, 1960 to July 18, 1961 and in the Army from February 24, 1980 to December 31, 1993. He has a history of right knee chondromylasia and degenerative disc disease of the spine for which he received a 40 percent disability rating for the back from the Department of Veterans Affairs.

In a letter dated May 31, 2001, the employing establishment informed the Office that appellant had been a temporary employee whose term of employment ended on May 25, 2001. It was noted that appellant conducted one briefing per day from April 30 to May 11, 2001 and that he was required to carry an easel approximately 10 to 12 times during that period. The employing establishment disputed the distance the easel was carried, maintaining that it was no more that 90 feet.

In a June 12, 2001 report, Dr. Andrew Wolffe, a treating physician, wrote that appellant had been seen on that date for evaluation of injuries while working a recent tour of duty (TDY) at Fort Hood, Texas. He stated that appellant developed acute shoulder pain in his left shoulder while in Texas and had partial relief from three chiropractic manipulations of his cervical and lumbar spine. Dr. Wolffe noted that there was limited abduction to 90 degrees and very little external rotation without pain. He specifically stated, "This appears to represent a new [left] rotator cuff injury acquired while working although I cannot define the exact mechanism of this

injury." Dr. Wolffe further stated as follows: "His renewed [right] sciatic pain appears to represent an exacerbation of an old disc problem, which had been quiescent on celebrex and with abdominal strengthening exercises. A plausible explanation of this reexacerbation is that it happened in the context of being asked to carry bulky presentation boards in connection with his work in the recent TDY."

There are certificates of chiropractic care indicating that appellant received adjustment back treatments on May 24 and 29, 2001.

In a June 13, 2001 letter, the Office advised appellant of the factual and medical evidence required to establish his claim for compensation.

In a decision dated August 29, 2001, the Office denied compensation on the grounds that the medical evidence of record was insufficient to support that appellant sustained any injury that was causally related to work factors.

On September 5, 2001 appellant requested a review of the written record.

In a decision dated March 25, 2002, an Office hearing representative affirmed the Office's August 29, 2001 decision.

Appellant requested reconsideration on April 6, 2002 and submitted evidence pertinent to a claim with the Department of Veterans Affairs for depression related to his military service, including: (1) a Department of Veterans Affairs rating decision dated January 30, 2002; and (2) a letter from the Department of Veterans Affairs dated February 25, 2002, explaining appellant's benefit entitlement schedule; and (3) a physical residual function capacity questionnaire completed by Dr. Wolffe on October 16, 2001.[1] Appellant maintained in his April 6, 2002 letter that he became depressed because he was unable to be employed due to a work-related injury he suffered on May 11, 2001.

In an April 15, 2002 decision, the Office denied appellant's request for reconsideration on the merits.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the

[1] Dr. Wolffe provided a diagnosis of spinal stenosis due to bulging L4-5 disc; hypertension, degenerative joint disease of the cervical spine, depression, and osteoarthritis of the right knee. Clinical findings and work restrictions were identified. Dr. Wolffe, however, did not address the etiology of appellant's multiple medical conditions.

diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's 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 upon 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.[2]

Appellant has failed to submit a rationalized medical opinion setting forth a specific diagnosis of his condition with an explanation supported by rationale as to how the diagnosed condition is causally related to the work factors stated on his CA-2 claim form. Although appellant submitted a June 12, 2001 report from Dr. Wolffe stating appellant presented with renewed sciatica pain in the lower back that was aggravated by carrying presentation equipment during a work detail, the physician offers no discussion of appellant's history of back injury or the nature of the sciatica. He does not discuss the mechanism of injury to such an extent that one can understand how appellant's degenerative disc disease might have been aggravated. He further offers no objective or physical findings to substantiate appellant's complaints of back pain. Because Dr. Wolffe's opinion does not provide a definitive diagnosis or any medical rationale for its conclusion on causal relationship, the Board finds that Dr. Wolffe's opinion is insufficiently reasoned to carry appellant's burden of proof on causal relationship. Accordingly, the Office properly denied appellant's claim for compensation.

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[3] The regulations provide 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 new evidence not previously considered by the Office.[4] When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. 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.[5] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[6] When a claimant

[2] *George A. Ross*, 43 ECAB 346 (1991); *James D. Carter*, 43 ECAB 113 (1991).

[3] 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[4] 20 C.F.R. § 10.606(b) (1999).

[5] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[6] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

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."[7]

In this case, appellant did not establish that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. The Board notes that the findings of the Department of Veterans Affairs is unrelated to appellant's claim for federal workers' compensation. The Office correctly informed appellant on reconsideration that there was no bearing between the decision of the Department of Veterans Affairs and the Office decision dated March 25, 2002. Thus, the Board does not find that the evidence submitted by appellant on reconsideration pertaining to the findings of the Department of Veterans Affairs to be relevant and pertinent to the issue of the case. The report by Dr. Wolffe likewise fails to constitute relevant and pertinent new evidence as the physician did not address the issue of causal relationship. He merely listed appellant's diagnosed conditions and medical restrictions. Because appellant did not satisfy the requirements of section 8182, the Office properly denied his request for reconsideration on the merits.

The decisions of the Office of Workers' Compensation Programs dated April 25 and March 25, 2002 are hereby affirmed.

Dated, Washington, DC
December 4, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[7] 20 C.F.R. § 10.608(b).