U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THADDEUS CASON and DEPARTMENT OF THE NAVY, NORFOLK NAVAL BASE, Norfolk, VA

Docket No. 01-1474; Submitted on the Record;
Issued February 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty on January 21, 2000; and (2) whether the Office of Workers' Compensation Programs, in its February 13, 2001 decision, properly denied appellant's request for a review of the written record under section 8124 of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record and finds that appellant failed to establish that he sustained an injury in the performance of duty on January 21, 2000; and that the Office properly denied appellant's request for a review of the written record.

An employee seeking benefits under the Act[1] has the burden of establishing 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, and that the claim was filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty,[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[6]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged. Appellant, then a 62-year-old maintenance mechanic leader, claimed that on January 21, 2000 while performing his duties, *i.e.*, cleaning out a urinal drain line with a handheld electric drain cleaner, the cable hit a stoppage and caused the cable to produce a sudden hard jerk to his left shoulder. However, the Office found that the evidence was insufficient to establish that an injury resulted from the incident. By letter postmarked December 7, 2000, appellant requested a review of the written record by an Office hearing representative.[7] By decision dated February 13, 2000, the Office denied appellant's request as untimely.

The Board finds that appellant has not established that the January 21, 2000 employment incident resulted in an injury. To support the claim, appellant submitted a January 24, 2000 report by Dr. Michael A. Wilson, who stated that appellant was seen for left shoulder pain which he had for two days, that appellant denied any injury to his shoulder, that x-rays revealed calcification of acromiocoracoid tendon and diagnosed tendinitis; a January 27, 2000 attending physician's report by Dr. Colin Hamilton, a Board-certified orthopedic surgeon, who diagnosed left shoulder bursitis and stated that whether the condition was caused or aggravated by appellant's employment activity is unknown; a January 27, 2000 office note by Dr. Hamilton, noting that appellant did not relate his left shoulder condition to a specific injury, but to his routine work. He noted that x-rays revealed an apparent anterior spur on the acromion for which appellant was given an injection and diagnosed bursitis syndrome "Can[no]t rule out rotator cuff tear;" a March 24, 2000 attending physician's report by Dr. Hamilton diagnosing a left rotator cuff tear and checking "yes" to the question of whether the condition was caused or aggravated by employment activity; a March 24, 2000 office note by Dr. Hamilton noting that a magnetic resonance imaging (MRI) scan revealed a rotor cuff tear and discussing surgery for a partial acromionectomy and rotator cuff repair; a March 20, 2000 report of an MRI scan of the left upper extremity interpreted by Dr. Douglas Brown, a Board-certified radiologist, as revealing a tear of the supraspinatus tendon of the rotator cuff; and a July 5, 2000 office note by Dr. Hamilton noting a history of injury as provided by appellant and stating "documented left rotator cuff tear, severe bursitis syndrome and scheduling physical therapy.

In this case, there is insufficient rationalized medical opinion evidence supporting a causal relationship between appellant's employment and his diagnosed condition of rotor cuff tear. In his January 24, 2000 report, Dr. Wilson, after reviewing x-rays, diagnosed tendinitis, but did not address whether appellant's condition was causally related to the January 21, 2000 employment incident. Although in several reports Dr. Hamilton diagnosed bursitis, a spur on the acromion, and a rotator cuff tear, his only discussion on causal relationship was on the March 24, 2000 attending physician's report on which he checked "yes" to the question regarding whether the left rotator cuff tear was caused or aggravated by appellant's employment activity.[8] As well, Dr. Hamilton did not discuss an aggravation of any diagnosed condition. None of the medical evidence submitted provided an opinion with supporting rationale causally relating a diagnosed

[7] Submitted with the request was a copy of a July 5, 2000 medical report previously of record.

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994). The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden included the necessity of furnishing an opinion from a physician who supports his conclusion with sound medical reasoning. *See Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

condition to the January 21, 2000 employment-related incident. Therefore, none of the evidence is sufficient to establish appellant's traumatic injury claim. By letter dated April 14, 2000, the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for a review of the written record under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing or a review of the written record by an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary … is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[9] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing or review of the written record, a claimant is not entitled to a hearing or a review of the written record as a matter of right unless the request is made within the requisite 30 days.[10]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings or review the written record in certain circumstances where no legal provision was made for such and that the Office must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.[11] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing or review of the written record request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,[12] when the request is made after the 30-day period for requesting a hearing[13] or review of the written record and when the request is for a second hearing on the same issue.[14]

In the present case, appellant's request for a review of the written record was made more than 30 days after the date of issuance of the Office's prior decision dated June 20, 2000 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a review of the written record in a letter postmarked December 7, 2000 and received by the Office December 11, 2000. Therefore, the Office was correct in stating in its February 13, 2001 decision that appellant was not entitled to a hearing as a matter of right because his request for a review of the written record was not made within 30 days of the Office's June 20, 2000 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing or a review of the written record as a matter or right, the Office, in its

[9] 5 U.S.C. § 8124(b)(1).

[10] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[11] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[12] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[13] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[14] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

February 13, 2001 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by requesting reconsideration and submitting additional evidence to establish that his claimed medical conditions are causally related to the injury of January 21, 2000. The Board has held that 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 deduction from established facts.[15] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a review of the written record under section 8124 of the Act.

The decisions dated February 13, 2001 and June 20, 2000 of the Office of Workers' Compensation Programs are affirmed.[16]

Dated, Washington, DC
February 22, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[15] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[16] The Board notes that on appeal appellant submitted a medical report dated July 25, 2000 that was not considered by the Office and, therefore, cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board also notes that pages 113 and 114 of the record belongs to someone other than appellant.