U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER S. JENSEN and DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, Ogden, UT

Docket No. 01-1192; Submitted on the Record;
Issued January 9, 2002

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his right knee meniscus tear was causally related to his employment; and (2) whether the Office of Workers' Compensation Programs properly denied merit review.

On October 28, 1999 appellant, then a 55-year-old sheet metal worker, filed an occupational disease claim alleging that 32 years of sheet metal work, crawling on aircraft, squatting, climbing up and down stairs, caused a right knee meniscus tear. He noted that his knee "pops in and out." Appellant stated that he was initially aware of his condition on October 30, 1997 and was initially aware that it was caused by his federal employment on October 25, 1999.

In an attending physician's report dated November 5, 1999, Dr. Michael Sumko, an osteopath, stated that appellant related that while he was squatting he felt a pop in his knee. Dr. Sumko noted that appellant had a torn meniscus of the right knee and required surgery as soon as possible.

By letter dated December 10, 1999, the Office notified appellant regarding the additional information he needed to support his claim.

In a medical report dated October 25, 1999 and received by the Office on December 23, 1999, Dr. Sumko stated that appellant's right knee meniscus tear was "most likely due to a squatting injury at work."

In a report dated November 5, 1999 and received by the Office on January 20, 2000, Dr. Sumko stated that appellant's injury was caused when he "squatted and heard a pop."

In a report dated January 25, 2000, Dr. Sumko stated that appellant had been in pain in his knee for many years and that "Recently, he squatted underneath the house and was doing

some activities and then had some increased pain and stiffness in his knee. Physical examination was consistent with torn meniscus."

In a report dated January 28, 2000, Dr. Sumko stated that appellant "was doing some squatting beneath his house this (sic) is when he felt what sounded like a tear of his meniscus." He added:

In answer to your question whether or not this is specifically due to exposure at his federal employment, it would be difficult to say that this was specifically caused by it. He had given a chronic kind of history of some knee discomfort but when he was doing some kind of squatting beneath his house, this is when he felt what sounded like a tear in his meniscus. Some of the degenerative changes he had in his knee may have contributed to a long-term process of the degeneration of the medial femoral condyle consistent with early arthritis. Having just seen him at this point in time I would have to say that at least the meniscal tear could be contributed to an acute event not related to work but the degenerative changes have been there for some time and may be related to the type of work he does.

By decision dated March 10, 2000, the Office denied appellant's claim on the grounds that the initial evidence of file failed to establish a causal relationship between his medical condition and his employment.

In a letter dated March 27, 2000, appellant requested reconsideration of the Office's March 10, 2000 decision and stated that his knee gave out in January 2000 while home on sick leave after he had been diagnosed with a meniscus tear and while he was waiting authorization for surgery from the Office. In describing the January incident that caused pain, appellant stated that, shortly after the first of January 2000, he was in his basement repairing a furnace duct when his "knee gave way and I was unable to bear any weight or stand."

In support of his reconsideration, appellant submitted a report dated March 22, 2000 from Dr. Sumko who stated:

> "I have reevaluated [appellant's] work.... After finding out more about his work and the fact that since June 1996 he had been in a job which required heavy lifting somewhere between 50 and 80 pounds on a regular basis. He stands for the majority of the time and he is required to crawl quite a bit on his job. I would think that over 33 years he had been in a job which was primarily sedentary and did not require these types of things he performs on a daily basis he would have much fewer knee problems. Although we cannot pinpoint one specific incident that caused his problem we can probably indicate because he has the type of work described in the job description that his knees would be under a significant amount of stress and wear and tear over a period of 33 years."

By decision dated May 23, 2000, the Office denied modification of appellant's request for reconsideration. The Office found that Dr. Sumko failed to provide a rationalized medical opinion in support of a causal relationship between appellant's condition and his employment. Furthermore, the Office noted that Dr. Sumko noted a traumatic event in November 1999, but

later noted that it occurred in January 2000. It also noted that Dr. Sumko's description of the January incident was inconsistent with the incident as described by appellant.

By letter dated October 25, 2000, appellant requested reconsideration. In support of his request appellant submitted an October 13, 2000 medical report from Dr. Sumko. In that report the doctor stated that after 20 years of lifting between 45 and 80 pounds, standing for at least 3 to 5 hours a day, and intermittent crawling, kneeling and repeated bending, stooping, climbing and walking, appellant's working conditions "could have caused some of the degenerative changes in the torn meniscus in his knee."

By decision dated November 9, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and did not warrant a merit review.

By letter dated February 25, 2001, appellant again requested reconsideration. By decision dated March 5, 2001, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that his right knee meniscus tear was causally related to his employment.

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;[1] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[2] 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 diagnosed condition was causally related to the employment factors identified by the claimant.[3]

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 rationalized opinion on the issue of whether there is a causal relationship between 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,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific factors identified by claimant.[6]

---

[1] *See Ronald K. White*, 37 ECAB 176 (1985).

[2] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[3] *See generally Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

[4] *William Nimitz, Jr.*, 30 ECAB 567 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384 (1960).

[6] *See William E. Enright*, 31 ECAB 426 (1980).

In this case, Dr. Sumko's October 25, 1999 medical report in which he stated that appellant's right knee meniscus tear was "most likely due to a squatting injury at work" is insufficient to establish a causal relationship because it does not include a rationalized medical opinion explaining precisely how appellant's squatting would have caused a meniscus tear. The doctor then submitted several reports where he stated that appellant's injury occurred when his knee popped, which he ultimately attributed to an event in January 2000 when appellant was under his house. However, these reports are inconsistent with appellant's report in which he stated that he was in the basement fixing a furnace when his knee gave way. Given the internally inconsistent statements between the doctor and appellant, as well as the speculative nature of the doctor's opinion as to what caused appellant's meniscus tear, the Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[7] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[8] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[9] To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[10]

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case,[11] and that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[12] However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[13]

---

[7] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2).

[9] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[10] 20 C.F.R. § 10.607(a).

[11] *Daniel Deparini*, 44 ECAB 657 (1993); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[12] *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[13] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

In support of his October 25, 2000 request for reconsideration, appellant submitted an October 13, 2000 report from Dr. Sumko. However, this report is essentially repetitive of his prior reports wherein he stated that appellant's work requirements could have caused some of appellant's degenerative changes.

Appellant filed a subsequent request for reconsideration on February 25, 2001, however, appellant did not submit any evidence in support of his petition, and the Office, on March 5, 2001, denied his request for reconsideration.

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[14] However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[15] Consequently, given the repetitive nature of the evidence submitted by appellant in support of his October 25, 2000 request for reconsideration, he did not meet the requirements set forth at 20 C.F.R. § 10.606(b), noted above.

The decisions of the Office of Workers' Compensation Programs dated March 5, 2001 and November 9 and May 23, 2000 are affirmed.

Dated, Washington, DC
January 9, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[15] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).