U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH PASQUA and U.S. POSTAL SERVICE,
POST OFFICE, Somerset, NJ

Docket No. 01-1302; Submitted on the Record;
Issued January 25, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are whether: (1) appellant met his burden of proof in establishing that he sustained an injury on May 3, 1999 in the course of his employment; and (2) whether the Office of Workers' Compensation Programs properly denied merit review in its decisions dated November 22, 2000 and February 16, 2001 pursuant to 5 U.S.C. § 8128(a).

On May 3, 1999 appellant, then a 33-year-old postal employee, filed a recurrence of disability claim for compensation benefits alleging that performing repetitive duties of letter distribution aggravated his back and wrist conditions. He asserted that his current conditions required use of a chair with back support, which had not been provided to date. The Office determined that appellant actually claimed a new injury on May 3, 1999, in his capacity as a limited-duty carrier and that the claim should be processed as a new injury. A new claim number was thereafter assigned.

On July 23, 1999 the employing establishment challenged the claim. A representative of the employing establishment stated that appellant was working within medical restrictions as a result of a prior job-related injury sustained on September 9, 1995 and did not sustain any further injury or aggravation due to work factors.

In a decision dated August 21, 1999, the Office denied appellant's claim for compensation on the grounds that the evidence presented was insufficient to establish that he sustained the May 3, 1999 injury as alleged. The Office found that, while appellant submitted factual and medical evidence in support of the claim, the medical evidence made no mention of a May 3, 1999 injury.

On August 25, 1999 appellant requested an oral hearing of the Office's decision. Appellant subsequently submitted various medical reports from Dr. Sripad Dhawlikar, a Board-certified orthopedic surgeon. In a May 11, 1999 report, he indicated that appellant was seen with complaints of lower back pain, right-sided wrist pain and right shoulder pain. Dr. Dhawlikar related that appellant twisted his lower back when sitting at work on May 3, 1999 while sorting mail. He stated

that appellant turned in his seated position and noted significant worsening of his lower back pain. Dr. Dhawlikar further noted that appellant sustained a prior injury in October 1996 when he pulled a tray filled with mail from his truck and experienced worsened back pain and another work injury to his right wrist when he tripped over cinder blocks while delivering mail. He diagnosed lumbar herniated disc at L5-S1 with degenerative disc disease at L4-5 and L5-S1; Lunotriquetral fusion of the right wrist and right shoulder impingement syndrome with rotator cuff tendinitis and subacromial bursitis.

In June 7 and July 23, 1999 reports, Dr. Dhawlikar stated that appellant was seen for further evaluation of continuing shoulder and low back pain and that he had been given light-duty work to assist with his symptoms.

In an August 4, 1999 radiology report, Dr. David Mayer, attending physician, reviewed the results of a magnetic resonance imaging scan performed on the right shoulder. He noted that appellant had apparently hurt himself while sorting mail. Dr. Mayer diagnosed probable rotator cuff tendinitis of a moderate degree without evidence of through tear; possible minor tear of the superior articular surface, small effusion in the subacromial/subdeltoid bursal complex and possible partial tear of the deltoid muscle.

A hearing was held on January 31, 2000. Appellant subsequently submitted a February 1, 2000 report from Dr. Frank Alario, a Board-certified internist, in which he stated: "On May 11, 1999 [appellant] was examined in this office for job[-]related injuries that occurred on May 3, 1999. He was treated for injuries to his right shoulder, right wrist and lower back." Appellant also submitted a September 1, 1999 letter from Dr. Dhawlikar who referred to an injury that appellant sustained on "May 3rd" while at work.

By decision dated March 13, 2000, an Office hearing representative found that the medical evidence of record was insufficient to support that appellant sustained a personal injury as a result of the work incident on May 3, 1999 and affirmed the prior decision. The Office hearing representative found that none of the medical evidence submitted provided a definite opinion as to whether appellant's conditions affecting his low back, right wrist and right shoulder causally related to the specified work activities of May 3, 1999.

On July 3, 2000 appellant requested reconsideration of the prior decision and submitted additional evidence. He argued that although he reported to the employing establishment that he sustained a new injury on May 3, 1999 he was not provided with a traumatic injury claim but instead a recurrence claim form. Appellant outlined his medical treatment on May 11, 1999 and argued that the evidence supported that he sustained work injuries to his back, shoulder and wrist on May 3, 1999. Appellant further argued that the employing establishment did not provide him a chair with back support, as prescribed, due to his previous injuries and that the Office in the prior decision corroborated that on May 3, 1999 he had no back support while performing his limited duty of sorting mail. He then stated that he was providing further medical rationale from Dr. Alario in addition to the evidence of record, which he claimed already established a work injury on May 3, 1999.

In a report dated May 26, 2000, Dr. Alario stated:

> "On May 11, 1999 [appellant] was examined … for job[-]related injuries that occurred on May 3, 1999. He was treated for injuries to his right shoulder, right wrist and lower back…. [Appellant] has a lumbar herniated disc at L5-S1 and a smaller one at L4-L5. His right shoulder shows a positive impingement sign with rotator cuff tendinitis and subacromial bursitis. [Appellant] has a previous lunotriquetral fusion for arthritis of his right wrist. Due to these injuries, he is severely limited in his capabilities. If [sic] feel the injury is a direct result of inadequate office equipment, in particular, the chair [appellant] was using at the time of injury. As per the history of the injury, it is in my professional opinion, that the injury is a direct result of his employment activities."

By decision dated August 14, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence and argument of record was insufficient to warrant modification of its March 13, 2000 decision. The Office reasoned that Dr. Alario's May 26, 2000 report was simply a reiteration and expansion of his previously submitted February 1, 2000 report and it provided no rationalized opinion that appellant's diagnosed conditions resulted from factors of his employment.

On August 21, 2000 appellant again requested reconsideration. He argued that reconsideration should be granted because the evidence submitted both on July 3 and August 14, 2000 was sufficient to warrant modification of the prior decisions and that the Office should consider the May 3, 1999 incident a new injury.

By decision dated November 22, 2000, the Office denied appellant's application for merit review on the grounds that the evidence was duplicative of information previously submitted and insufficient to resolve the medical insufficiencies in the case.

On January 23, 2001 appellant again requested reconsideration and submitted argument previously of record to support his claim. By decision dated February 16, 2001, the Office again denied appellant's application for review on the grounds that the evidence was repetitious and insufficient to warrant a merit review.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury on May 3, 1999 causally related to employment factors.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.[1] Rationalized medical opinion evidence is medical evidence that 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. Such an 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

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

employment factors identified by appellant.[2] Causal relationship is a medical issue that can be established only by medical evidence.[3] The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.[4]

In this case, none of the medical reports submitted to the record sufficiently address the development or aggravation of appellant's lumbar herniated disc at L5-S1, right shoulder impingement with rotator cuff tendinitis and subacromial bursitis or wrist arthritis in connection with the May 3, 1999 injury. For example, Dr. Dhawlikar in a May 11, 1999 report indicated that appellant reported lower back, right-sided wrist and right shoulder pain related to twisting his back when sitting at work on May 3, 1999. In a September 1, 1999 report, he simply indicated that appellant sustained injuries on May 3, 1999 while at work. Dr. Dhawlikar's reports fail to provide any opinion on causal relationship and are therefore of no probative value. Further, there is questionable history of injury reported in his first report. Dr. Dhawlikar related that appellant twisted his lower back when sitting at work on May 3, 1999 sorting mail and that appellant turned in his seated position and noted significant worsening of his lower back pain. Appellant only attributed his condition in the claim to performing repetitive duties of letter distribution without proper chair support for his back. Thus, the probative value of this evidence is undermined in light of the questionable history of injury reported.

Dr. Alario stated in a February 1, 2000 report that appellant was examined for job-related injuries that occurred on May 3, 1999 and treated for injuries to his right shoulder, right wrist and lower back. He subsequently reported on May 26, 2000 that appellant sustained herniated discs, right shoulder impingement syndrome with tendinitis and bursitis and arthritis of the right wrist and further noted that these conditions were directly related to employment activities on May 3, 1999. Dr. Alario's conclusions however are insufficient to establish the requisite causal relationship because he failed to explain how performing repetitive duties of letter distribution and allegedly performing tasks without back support as claimed by appellant caused or aggravated the diagnosed conditions. Absent a rationalized medical opinion establishing a causal relationship between appellant's work factors and his conditions of herniation, shoulder impingement syndrome with tendinitis and bursitis and wrist arthritis, none of the medical reports are of significant probative value. Because the medical reports submitted omit a rationalized discussion of how the May 3, 1999 incident caused or aggravated the diagnosed conditions they are insufficient to establish that the May 3, 1999 incident caused the conditions as alleged in the claim. Accordingly, the Board finds that appellant has not met his burden of proof and the Office properly denied his claim.

The Board also finds that the Office properly denied further merit review on November 22, 2000 and February 16, 2001.

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[2] *Id*.

[3] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[4] *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

Under section 8128(a) of the Federal Employees' Compensation 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 claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence:

"(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

"(ii) Advances a relevant legal argument not previously considered by OWCP; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP."

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] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.[8]

In the present case, appellant's claim was denied on the basis that the evidence of record failed to establish with sufficient medical rationale that his diagnosed conditions were causally related to his claimed May 3, 1999 injury. On August 21, 2000 appellant requested reconsideration and submitted argument and medical evidence duplicative of evidence previously of record. In support of his request, appellant discussed the May 26, 2000 report of Dr. Alario considered in the prior decision and submitted a duplicative statement regarding the denial of his claim previously of record.

On January 23, 2001 appellant filed a second request for reconsideration. New and relevant medical evidence did not accompany the request, however, to the contrary, appellant reviewed again his medical condition and treatment and need of a chair with back support. By decisions dated November 22, 2000 and February 16, 2001, the Office found the evidence submitted in support of each request repetitive and insufficient to warrant merit review.

The underlying issue in the claim is whether appellant's herniation, shoulder impingement syndrome with tendinitis and bursitis and wrist arthritis was caused or aggravated by work factors and thus, is essentially medical in nature. Contentions made by appellant on the causal relationship of his conditions to work factors have no validity in view of the absence of rationalized medical

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b) (1999).

[7] 20 C.F.R § 10.608(b) (1999).

[8] *John E. Watson*, 44 ECAB 612, 614 (1993).

evidence relevant to the point at issue.[9] Further, his contentions regarding work equipment are irrelevant to the issue at hand.

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.[10] As the medical evidence and argument submitted is not relevant and pertinent to the issue in this case, it therefore is insufficient to warrant modification.[11] The Board finds that the Office properly denied appellant's applications for reconsideration of his claim.

The February 16, 2001, November 22 and August 14, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 25, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[9] *See John F. Critz*, 44 ECAB 788 (1993) (reopening of a claim not required where a legal contention does not have a reasonable color of validity).

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

[11] 20 C.F.R. § 8128(a)(3).