U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE SESSIONS and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 01-1334; Submitted on the Record;
Issued January 18, 2002

DECISION and ORDER

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

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a left knee condition in the performance of duty; 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 59-year-old plastic fabricator, filed a claim for benefits on August 15, 2000, alleging that he injured his left knee while pulling a heavy pallet on August 14, 2000. In support of his claim, he submitted several reports dated August 24 and September 29, 2000 from Dr. Robert W. Kunkle, a Board-certified orthopedic surgeon, who stated findings on examination and diagnosed degenerative changes and a posterior torn medial meniscus in appellant's left knee based on magnetic resonance imaging (MRI) scan in his September 29, 2000 report.

By letter dated October 24, 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, 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 additional evidence.

By decision dated December 8, 2000, the Office denied appellant's claim on the grounds that the claimed medical condition was not causally related to factors or incidents of employment.

By letter dated December 11, 2000, appellant requested reconsideration. He did not submit any new medical evidence with this request.

By decision dated March 1, 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 did not meet his burden of proof to establish that he sustained a left knee condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 had 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 the present 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 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 August 14, 2000 caused a personal injury and resultant disability.

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *Joe 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.*

[7] *See John J. Carlone*, *supra* note 4.

In this case, although appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that his claimed condition was causally related to factors of his federal employment. He submitted several summary reports from Dr. Kunkle, but these did not contain a rationalized medical opinion demonstrating that appellant's diagnosed condition was causally related to an August 14, 2000 employment injury at work. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Accordingly, as appellant failed to submit any probative medical evidence establishing that his claimed left knee condition was causally related to his employment, 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 his 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.[8] 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.[9]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and his requests did not contain any new and relevant medical evidence for the Office to review. Additionally, the December 11, 2000 letter from appellant's attorney 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. Although appellant generally contended that he sustained an emotional condition in the performance of duty, he failed to submit new and relevant medical evidence in support of this contention.[10] Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's March 1, 2001 decision.

[8] 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

[9] *Howard A. Williams*, 45 ECAB 853 (1994).

[10] 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).

The decisions of the Office of Workers' Compensation Programs dated March 1, 2001 and December 8, 2000 are hereby affirmed.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member