U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIAN I. QUINONES and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bronx, NY

Docket No. 01-248; Submitted on the Record;
Issued March 4, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden to establish that he sustained a recurrence of disability on January 12, 2000; and (2) whether the Office of Workers' Compensation Programs abused 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).

On June 5, 1992 appellant, a 25-year-old policeman, experienced electric shock in his right arm when he touched an electrified security gate. He filed a claim for benefits on the date of injury, which the Office accepted for electric shock, right arm and lumbar myofascitis. The Office placed appellant on the periodic rolls and paid him appropriate compensation for total disability.

Appellant's treating physician, Dr. Rolando Sanchez-Medina, Board-certified in orthopedic surgery, released appellant to return to light duty in a modified police officer job on December 27, 1999. Dr. Sanchez-Medina indicated in a November 27, 1999 work restriction evaluation that appellant could work six hours per day, with no reaching, reaching above the shoulder or twisting and no more than three to four hours of sitting, walking, standing, pushing, pulling, lifting, or work involving fine repetitive movements of the wrists or elbows and no more than two to three hours of driving.

On January 18, 2000 appellant filed a Form CA-2a claim for recurrence of disability, alleging that he experienced upper and lower back pain on January 12, 2000 which was causally related to his accepted, June 5, 1992 employment injury. In support of his claim, appellant submitted a February 9, 2000 form report and reports dated April 18 and May 24, 2000 from Dr. Hugo D. Goldstraj, a Board-certified pediatrician. In his form report, Dr. Goldstraj indicated that appellant had a neck impairment and lumbar myofascitis and that he was unable to do deskwork at that time. He also checked a box indicating that appellant's condition was caused or aggravated by his employment. In his April 18, 2000 report, Dr. Goldstraj stated that appellant had frequent headaches with radiation to the right side of his neck, upper back pain exacerbated

by movement, lower back pain radiating to both legs and paresthias in his hands and feet. He essentially reiterated these findings in his May 24, 2000 report.

The Office referred appellant for a second opinion examination with Dr. David B. Keyes, a Board-certified orthopedic surgeon, which took place on February 15, 2000. In a report dated February 18, 2000, Dr. Keyes stated that there was no objective medical evidence of any significant pathology and no orthopedic explanation for his subjective complaints of pain. He advised that appellant's alleged current condition was not causally related to his June 5, 1992 employment injury, that he was not disabled for work and that there was no objective evidence of any condition that should disable him from work. Dr. Keyes opined that appellant could perform the duties of a modified police officer job, as described in the statement of accepted facts and was in no need of further treatment.

By decision dated June 14, 2000, the Office denied appellant's claim for recurrence of disability as of January 12, 2000.

By letter dated June 22, 2000, appellant requested reconsideration. In support of his request, appellant submitted a June 18, 2000 report from Dr. Jose Antonio Munoz, Board-certified in internal medicine, who stated findings on examination and advised that appellant had headaches, neck pain secondary to cervical sprain/strain, superimposed by C5, C6 and C7 root involvement and low back pain likely secondary to lumbosacral sprain/strain, superimposed by L5 and S1 root involvement on the left side, with probable disc protrusion. He did not render an opinion, however, as to whether appellant's current condition was causally related to the June 5, 1992 employment injury.

By decision dated July 24, 2000, the Office denied appellant's request, finding that the medical evidence submitted was not sufficient to warrant modification of the June 14, 2000 Office decision.

By letter dated August 31, 2000, appellant requested reconsideration. In support of his claim, appellant submitted June 23, July 6 and 20 and August 3, 2000 reports from Dr. Munoz, in which he essentially reiterated his previous findings and conclusions. In addition, appellant submitted an August 24, 2000 report from Dr. Munoz, in which he reviewed a report from appellant's treating physician, which is not in the record. Dr. Munoz noted that the physician had checked a box indicating appellant's current condition was causally related to his employment and stated:

> "[I]n the statements prepared by his attending physician ... regarding the date of injury of the patient, [June 5, 1992], [appellant] was having a condition arising in the cervical spine, that is[,] the neck area, as well as the lumbosacral spine, that is[,] the lower back area. The attending physician himself indicated that there was no history of concurrent or preexisting injury causing impairment other than this accident. Therefore, it is likely that based on the attending physician's report, at the time of the accident the patient suffered a condition arising from the neck area and the low back area. He never had any other accident besides the one on [June 5, 1992], so it is likely that his lesions are related to this [June 5, 1992] accident. I concur with the attending physician's report."

By decision dated September 21, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not met his burden to establish that he sustained a recurrence of disability on January 12, 2000.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

In this case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates his condition or disability as of January 12, 2000 to his employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only medical evidence which appellant submitted consisted of the reports from Drs. Goldstraj and Munoz. These reports provided a history of injury and a diagnosis of the condition, indicated very generally that appellant complained of disabling pain on January 12, 2000 and imposed physical restrictions on certain work activities, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's condition and disability as of January 12, 2000 was causally related to his accepted cervical condition.

The reports from Drs. Goldstraj and Munoz do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and his alleged cervical condition and disability. Causal relationship must be established by rationalized medical opinion evidence. The opinions from Drs. Goldstraj and Munoz on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.[2] The reports in the record failed to provide an explanation in support of appellant's claim that he was totally disabled as of January 12, 2000. Thus, the reports from Drs. Goldstraj and Munoz did not establish a worsening of appellant's condition and, therefore, did not constitute a probative, rationalized opinion demonstrating that a change occurred in the nature and extent of the injury-related condition.[3]

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[1] *Terry R. Hedman,* 38 ECAB 222, 227 (1986).

[2] *William C. Thomas,* 45 ECAB 591 (1994).

[3] The form report from Dr. Goldstraj that supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King,* 44 ECAB 203 (1992); *Salvatore Dante Roscello,* 31 ECAB 247 (1979).

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job. The record demonstrates that appellant returned to work December 27, 1999, on light duty within the restrictions outlined by his treating physician, Dr. Sanchez-Medina and there is nothing in the record indicating that the modified job as police officer ever required him to exceed these restrictions. Although appellant stopped working on January 12, 2000, he has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of his limited-duty assignment during the period claimed. Accordingly, as appellant has not submitted any factual or medical evidence supporting his claim that he was totally disabled from performing his light-duty assignment on January 12, 2000 as a result of his employment, appellant failed to meet his burden of proof. Thus, the Office properly found in its June 14 and July 24, 2000 decisions, that appellant was not entitled to compensation based on a recurrence of his employment-related disability.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of January 12, 2000 was caused or aggravated by his employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability. The Board, therefore, affirms the Office's June 14 and July 24, 2000 decisions denying benefits based on a recurrence of his work-related disability.

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 her 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.[4] 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]

In this 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 he has not submitted relevant and pertinent evidence not previously considered by the Office. Dr. Munoz's June 23, July 6 and 20 and August 3, 2000 reports are cumulative and repetitive because they essentially reiterate previous medical reports, which merely indicate appellant had findings demonstrating that he had lumbar and cervical conditions. The August 24, 2000 report from Dr. Munoz was pertinent and relevant in that it stated that appellant's alleged January 12, 2000 recurrence was causally related to his June 5, 1992 injury; however, this report was merely a summary review of another physician's form report, which was not in the record and was, therefore, not sufficient to establish a *prima facie* case for causal relationship. Additionally, appellant's August 31, 2000 letter, did not show the Office erroneously applied or interpreted a specific point of law nor did it advance a relevant legal argument not previously considered by the Office. Therefore, the Office did not abuse its

[4] 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

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

discretion in refusing to reopen appellant's claim for a review on the merits. The Board, therefore, affirms the Office's September 21, 2000 decision.

The September 21, July 24 and June 14, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member