

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. ELROD and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, FL

*Docket No. 01-2108; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on June 21, 2000 due to his accepted April 11, 1991 employment injury; (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim; and (3) whether the Office properly denied appellant's request for a hearing.

On April 12, 1991 appellant, then a 33-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his head and back on April 11, 1991 when he slipped and fell while helping a person in a wheelchair caught in an elevator door. The Office accepted the claim for cervical contusion and postconcussion syndrome and paid appropriate compensation. The Office issued appellant a schedule award claim for a seven percent impairment of his right eye on March 30, 1992.

Appellant filed a recurrence claim for disability commencing June 21, 2000 due to his accepted April 11, 1991 employment injury.¹ By letter dated October 18, 2000, the Office advised appellant of the medical and factual evidence required to support his recurrence claim. He did not submit any medical evidence.

By decision dated January 2, 2001, the Office denied appellant's claim for recurrence of disability.²

On January 19, 2001 appellant filed a request for reconsideration along with a bill from Center for Sight, Inc. dated November 10, 2000.

¹ On the form appellant noted that he stopped for four hours for a doctor's appointment on June 21, 2000 because of trouble with his vision.

² Despite being advised by the Office of the need for additional factual and medical information, appellant did not submit any medical evidence in support of his claimed recurrence of disability.

In a decision dated April 17, 2001, the Office denied appellant's request for merit review on the basis that he failed to submit new and relevant medical evidence or raise a new legal argument.

On May 9, 2001 the Office received appellant's request for a hearing.³ In a decision dated July 9, 2001, a hearing representative denied appellant's request for a hearing, noting that as he had previously requested reconsideration, he was not entitled to a hearing as a matter of right. The hearing representative further noted that he had considered the matter in relation to the issue involved and indicated that appellant's request was further denied on the basis that the issue could be addressed through a reconsideration request or appeal to the Board.

The Board finds that appellant has not sustained a recurrence of disability on June 21, 2000 due to his accepted April 11, 1991 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to this employment injury.⁴ As part of this burden of proof, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁶ The fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship between the two.⁷

The record contains no such medical opinion or any medical evidence. Indeed, appellant failed to submit any medical opinion evidence relating his current alleged disability, which began on June 21, 2000, to his April 11, 1991 employment injury. For this reason, he has not discharged his burden of proof to establish the claim that he sustained a recurrence of disability as a result of his accepted employment injury.

Because appellant has failed to submit any medical evidence establishing that he sustained a recurrence of disability causally related to his accepted April 11, 1991 employment injury, the Board finds that appellant has not met his burden of proof.

Next, the Board finds that the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

³ The letter was dated January 19, 2001 and "reconsideration" was crossed out and "a hearing" was inserted.

⁴ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Henry L. Kent*, 34 ECAB 361 (1982).

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁶ *Alfredo Rodriguez*, *supra* note 5.

⁷ *Barbara J. Williams*, 40 ECAB 649 (1989); *James A. Long*, 40 ECAB 538 (1989).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁸ the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁹ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁰

In the present case, the Office denied appellant's claim without conducting a merit review on the grounds that evidence submitted was irrelevant, immaterial and insufficient. In support of his request for reconsideration, all that appellant submitted was a bill dated November 10, 2000 from Center for Sight, Inc. This evidence is not relevant to the issue in the case, *i.e.*, whether appellant's alleged recurrence of disability 2000 was causally related to his accepted April 11, 1991 employment injury. As appellant has failed to submit any new and relevant evidence not previously considered by the Office, the Office properly determined that appellant had failed to meet the requirements for a merit review.

In the instant case, appellant submitted no new relevant and pertinent evidence in support of his January 19, 2001 request for reconsideration, nor did appellant show that the Office erroneously applied or interpreted a point of law. Accordingly, the Office properly denied appellant's request for review on the merits.

Lastly, the Board finds that the Office properly denied appellant's request for a hearing.

By decision dated July 9, 2001, the Office denied appellant's hearing request. The Office found that appellant was not entitled to a hearing as a matter of right because he had previously requested reconsideration. The Office exercised its discretion to conduct a limited review of the case and indicated that appellant's request could be addressed through a reconsideration application.

Section 8124(b)(1) of the Act,¹¹ concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "[b]efore 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."¹²

⁸ 5 U.S.C. § 8128(a) (providing that "[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)."

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² 5 U.S.C. § 8124(b)(1); *see John T. Horrigan*, 47 ECAB 166 (1995).

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹³

In the present case, appellant had requested reconsideration in a letter dated January 19, 2001 and the Office denied modification of its prior decision in an April 17, 2001 nonmerit decision. The Office exercised its discretion by finding that whether appellant had a recurrence of disability could equally be addressed by submitting new, relevant evidence and requesting reconsideration. As the only limitation on 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 deductions from known facts.¹⁴ There is no evidence in the case record to establish that the Office improperly denied appellant's request for a hearing and, thus, the Board finds that the Office properly denied appellant's request.

The decisions of the Office of Workers' Compensation Programs dated July 9, April 17 and January 2, 2001 are hereby affirmed.

Dated, Washington, DC
May 6, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Philip G. Feland*, 47 ECAB 418 (1996).

¹⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).